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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 628.

THE CANAL BANK, THE CRESCENT CITY BANK, THE UNION BANK, THE LOUISIANA STATE BANK, I. MARSH DENMAN, E. DUPASSIE & CO., A. BIDAULT, AND H. W. CONNOR & SON, APPELLANTS,

vs.

ROBERT G. HUDSON AND C. C. EWING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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1 Pleas and proceedings had and done in the circuit court of the United States for the southern district of Mississippi, begun and held, pursuant to law, in the court-room of said court in the city of Jackson, in said district, on the first Monday of May, A. D. 1882.

Present and presiding the honorable R. A. Hill, U. S. district judge for Mississippi.

CANAL BANK OF LOUISIANA, CRESCENT CITY Bank, the Union Bank the Louisiana State Bank, J. Marsh Denman & A. Bidault, citizens of Louisiana, *vs.* WILLIAM B. PARTEE, SARAH D. PARTEE, James D. Partee, Robert Bouman, Thomas A. Nelson, James Stewart, and Fountain Barksdale, trustee of Nelson, Lamphier & Co., defendants.	185 N. S.	In equity.

Be it remembered that heretofore, to wit, on the 1st day of April, A. D. 1873, the president, directors, and company of the Canal Bank of *of* Louisiana, the Crescent City Bank, the Union Bank, the Louisiana State Bank, all of which are bodies corporate, domiciled and doing business in the city of New Orleans, Louisiana, and J. Marsh Denman and A. Bidault, who are citizens of the State of Louisiana, by their attorney, filed in the clerk's office of said court their bill of complaint, which, with the exhibits thereto, are in the words & figures following, to wit:

To the hon. the judges of the circuit court of the United States for the southern district of Mississippi, in equity:

The president, directors, and company of the Canal Bank of Louisiana, the Crescent City Bank, the Union Bank, and the Louisiana State Bank, all of which are bodies corporate, domiciled and doing business in the city of New Orleans, Louisiana, and J. Marsh Denman and A. Bidault, who are citizens of the State of Louisiana, and who sue on behalf of themselves and all others claiming under the trust-deed hereinafter mentioned, bring this their bill against William B. Partee, Sarah D. Partee, James D. Partee, Robert Bouman, Thomas A. Nelson, James Stewart, and Fountain Barksdale, trustee for Nelson, Lamphier & Co., all of whom are citizens of the State of Mississippi, resident in the county of Yazoo, in said district, and thereupon your orator' complaining show unto your honors and state—

On the 19th day of November, A. D. 1866, the said Sarah D. Partee, and William B. Partee, her husband, being justly and truly indebted to your orators and others upon contracts made anterior to the late rebellion, which were valid, legal, and binding, in the amounts hereinafter mentioned, made their sundry promissory notes in writing of that date, and thereby at Yazoo City, Mississippi, in said district, undertook and promised to pay them the said sums of money, to wit:

To your orators, the said Canal Bank, the sum of five thousand dollars, as represented in five several promissory notes, each for the sum of one

thousand dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, and 1872, and all bearing interest at the rate of eight per centum per annum from date. To your orator, the said J. Marsh Denman, in the sum of forty-five hundred dollars, as represented in five promissory notes, each for the sum of nine hundred dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, & 1872, and all bearing interest at the rate of eight per centum per annum from date.

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To the said E. Dupassier & Co. the sum of thirty-six hundred dollars, as represented in five promissory notes, each for the sum of seven hundred and twenty dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, and 1872, and all bearing interest at the rate of eight per centum per annum after date.

To your orator, the said Union Bank, of Louisiana, the sum of twenty-two and seven $\frac{50}{100}$ dollars, as represented in five promissory notes, each for the sum of four hundred and forty-one $\frac{50}{100}$ dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, & 1872, and all bearing interest at the rate of eight per centum per annum from date.

To your orators, the said Louisiana State Bank, of Louisiana, the sum of twenty-one hundred and fifteen dollars, as represented in five promissory notes, each for the sum of four hundred and twenty-three dollars payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, and 1872, and all bearing interest at the rate of eight per cent. per annum from date.

To your orators, the said Crescent City Bank, the sum of two thousand dollars, as represented in five promissory notes, each for the sum of four hundred dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, and 1872, and all bearing interest at the rate of eight per centum per annum from date until paid.

All of said promissory notes were duly executed and delivered to the parties respectively entitled thereto, and remain and are wholly unpaid. The said Sarah D. Partee and William B. Partee, though often requested, have hereunto wholly failed and refused and still fail and refuse to pay any part of said notes, all of which were payable at the Citizens' Bank in New Orleans, Louisiana, and are herewith filed as Exhibits 1 to 30, inclusive. All of said notes bear on their backs an endorsement of the clerk of the probate court of Yazoo County that they are secured by deed in trust recorded in his office.

In order to induce the acceptance by your orators of said notes in novation and discharge of the debts then and for a long time prior thereto due and owing to them as above stated, the said William B. Partee and Sarah D. Partee, his wife, made, executed, and delivered to your orators their certain deed in trust, wherein one Robert Bouman, an attorney at law, resident at Yazoo City, in said district, is the party of the second part, and the grantor of the premises thereby conveyed. Said deed is dated November 19, 1866, and was on that day duly acknowledged and recorded in the office of the then probate clerk of Yazoo County, in which said lands are situated.

By said deed, for the consideration of ten dollars cash in hand paid, the said Partee and wife bargain, sell, and convey to the said Bouman the following lands lying, being, and situate in said district, to wit:

North half of section ten, the north half of section twenty-four, southwest quarter of section twenty-four, southeast quarter and southeast quarter of the northeast quarter of section twenty-seven, township twenty, range two west; southwest quarter section five, township twenty-three, range one east; section fifteen, township twenty-three, range two west; south half section ten, southwest quarter section eleven, southeast quarter section twelve, west half of section twenty-three, west half northwest quarter section twenty-four, township twenty-three, range two west; north half of northeast quarter & north half northwest quarter, section eighteen, west half section seventeen, all of section thirty-four, west half section thirty-five, township twenty-four, range four west; all of section twenty-three, the north half of section twenty-six, township twenty-four, range four west; all of section twenty-nine, northwest quarter section thirty-two, township twenty-four, range three west; east half section two, township twelve, range four west; containing 6,360 acres, more or less, lying in the counties of Sunflower and Tallahatchie, in said State; and the following lands lying in said county of Yazoo, in said district, to wit:

Lots 3, 4, 5, 6, 7, and 8, and 28¼ acres in lot one, section five, all of section six, northeast quarter section eight, south half section nine, northeast quarter and south half of northwest quarter section ten, east half of northwest quarter of section eleven, all of section fourteen, west half of northeast quarter, northwest quarter and south half of section eleven, north half and east half of southeast quarter of section fifteen, north half and southeast quarter of section twenty-three, west half section twenty-four, township nine, range four west; also the north half of section one, northwest quarter section two, northeast quarter of section three, township nine, range five west; lot seven section thirty-one, lot seven section thirty-two, township ten, range four west; lot six section thirty-four, lot seven section thirty-five, lots four and five section thirty-six, township ten, range five west; northeast quarter and east half of northwest quarter section eleven, west half of west half section one, east half of southwest quarter of section two, township twelve, range four west; together with all the mules, horses, cattle, farming implements, &c., belonging to said Partee and wife.

Said deed was upon the following trust and conditions, as recited therein, to wit:

That whereas the said Sarah D. Partee was indebted to your orators and others to the aggregate amount of one hundred and twenty-five thousand dollars, exclusive of interest, and was unable to pay said indebtedness in full, and was desirous of securing to all her creditors equally and alike, according to the amount she may ow' each, with the remnant of her estate, consisting of lands and personalty aforesaid; and whereas a large number of the holders of said claims had signified their consent to release and discharge her from the aforesaid claims upon her and her husband, securing to them one-half of the amount of the principal of said claims, to be evidenced by promissory notes to each creditor respectively, bearing date the day of said deed, payable in five annual instalments, to wit, on the first day of January, 1868, 1869, 1870, 1871, and 1872, with interest at the rate of eight per centum per annum from date until paid, and for the remainder of the principal of the other half of the aforesaid claims to take the aforesaid lands in Tallahatchie and Sunflower Counties at ten dollars per acre:

Therefore, in order to carry out the aforesaid settlement and payment of said indebtedness, the said Sarah D. Partee and her husband agreed to execute their said five promissory notes to each of said creditors for one-half the principal of the debt due him or her as stated, and the said lands were conveyed to said Bowman, trustee, for the use and benefit of said creditors, and for the purposes following, to wit:

4 Said Bowman was to have and hold said lands in Sunflower and Tallahatchie Counties for said creditors, who shall accept the same on the terms hereinbefore stated, and for the remaining half of the principal of their debts the notes of said Sarah D. Partee, as hereinbefore mentioned. And said Bowman was directed, at the request of a majority of said creditors, or them holding the largest amount of claims, sell the aforesaid lands at public sale at such place as he may deem most advisable and proper, for cash, upon notice by advertisement for days of the time and place of sale in some newspaper in this State, which will, in his opinion, give most general notice thereof, and the proceeds of sale, after deducting expenses of sale and commissions, shall divide among said creditors of said Sarah D. Partee.

Said deed contained other conditions in relation to said lands in Tallahatchie & Sunflower not necessary here to mention, and which are omitted to avoid prolixity.

In reference to the payment of the notes to be given for one-half of the principal amount of said debts, said deed was upon this trust and condition, that upon the failure of said Sarah D. Partee and William B. Partee to pay at maturity any of the said notes falling due as above set forth, then, at the request of the holders of the same, the said Bowman, trustee, was directed to sell the aforesaid lands, lying and being in the said county of Yazoo, and said personalty, or so much as might be necessary to pay said notes, at public sale, to the highest bidder, in front of the court-house door of Yazoo City, in said county of Yazoo, first giving thirty days' notice of the time & place of sale, by advertisement in a public newspaper in said county, and the proceeds of sale to divide, after deducting expenses and his commissions, and apply to the payment of the said promissory notes, and as said notes became due and payable respectively, like proceedings were to be had, until all of the same were fully paid off and discharged.

It was also, in and by said deed, covenanted and agreed that the said Sarah D. and William B. Partee were to remain in peaceable and quiet possession of said lands in Yazoo County, as well as of said personalty, until the same are sold under the provisions of said deed, and that the rents and profits arising therefrom, after the payment of all plantation and other necessary expenses, are conveyed thereby to said Bowman, trustee, to be applied, appropriated, and used for the payment of said promissory notes.

It was further stipulated in and by said deed that if any of said creditors should fail, within ninety days from the date of said deed, to signify in writing their acceptance of the terms of settlement and payment of their claims as therein provided for, such creditor so failing to accept will and shall be counted as refusing the same, and shall be barred of benefit, right, advantage, or privilege of the terms and provisions of said deed. Said deed was to be void if the said Sarah D. and William B. Partee paid all of the notes executed as contemplated therein; all of which will more fully and at large appear by reference to said deed, which is herewith filed as Exhibit A, and prayed to be taken as part hereof.

Your orators further state that they availed themselves of the benefit of said deed of trust, surrendered the old notes held by them and took new notes, as required, which are herewith filed, and the old notes so surrendered have long since been cancelled and destroyed by the said Sarah D. Partee.

Whether any other creditors of said Sarah D. than they have
5 accepted the terms and conditions of said deed, your orators know not, but they are advised, by reason of the premises, are entitled to all the benefits, privileges, and immunities contained in said deed, to all intents and purposes, notwithstanding their failure so to do. And not only this, but that all the creditors of said Sarah D. Partee who have not accepted the terms of said deed may still do so, and that the pretended covenant in said deed, by which it was purposed to bar them, upon failure to accept, is void, as being in contravention of law and public policy. The said deed was signed, sealed, and delivered by said Sarah D. and William B. Partee in due form of law, and the trust thereby imposed upon him was accepted by said Robert Bowman. In fact, the deed was written by him, and the whole labor of conducting the settlement thereunder was done and performed by him.

On the 21 November, 1866, the said Bowman, writing in the name of his firm, Messrs. Wilkinson & Bowman, of Yazoo City, addressed to your orators' attorneys in the city of New Orleans a letter, now in their possession, in which he distinctly accepted said trust, and stated that there was a judgment for five thousand dollars against the property conveyed by said deed, "which the plaintiff will settle on favorable terms," and that the "new claims or notes will be secured beyond doubt." A copy of this letter is herewith filed, marked "Exhibit B," and prayed to be taken as a part of this bill.

In the original proposition for a settlement, as made by Mrs. Sarah D. Partee, copy of which is filed herewith and as part hereof, marked "Exhibit C," she distinctly states that, "in order to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman and Judge Wilkerson to see to the proper execution of the deed" * * * "to a responsible trustee for the benefit of creditors."

Your orators herewith file as Exhibit D copy of receipt signed by said William B. Partee, showing the parties to whom new notes were given under the provisions of said trust-deed, and from whom old notes were received, and by whom surrendered to him. This receipt is dated January 21, 1868, and the original will be produced and proved at the hearing, if required.

Your orators further show unto your honors that the said firm of Wilkinson & Bowman instituted in the circuit court of Yazoo County, to the May term, 1866, an action against the said Sarah D. Partee and her husband, William B. Partee, upon a promissory note for the sum of $5,397.87, dated New Orleans, December 18, 1861, and payable twelve months after date to the order of and by Rotchford, Brown & Co. endorsed, then held by one James Stewart. Summons was regularly issued therein on the 28th day of April, 1866, which was delivered to the sheriff of said county of Yazoo, and returned by him with the following endorsement:

"Executed May 10, '66, by delivering a copy of the within to the within-named parties.

"S. M. DYER, *Sheriff*,
"By CHA'S C. DYER, *Deputy*."

On the 6th day of June, 1866, at said May term of said court there was rendered in said cause a judgment by default against the said Sarah D. Partee and William B. Partee, her husband, for the sum of $6,894.86. On the 15th April, 1867, there was made in said cause a pretended release of errors in these words:

6 "We hereby release all errors in the above-stated cause.
"Witness our hands and seals this 12th day of April, 1867.
"W. B. PARTEE. [SEAL.]
"SARAH D. PARTEE." [SEAL.]

Attest:
C. T. CALHOUN.

On the 18 February, 1868, the said Partee & wife prosecuted a writ of error to said judgment to the high court of errors and appeals, upon some pretence or other, which they and the said Robert Bowman procured to be dismissed fraudulently, intending thereby to defeat, hinder, and delay your orators. Said writ was not sued out for any bona fide purpose of defence, but as a mere trick and device to consummate a fraudulent purpose to defeat the trust-deed aforesaid, under which your orators claim. Your orators are advised, believe, and charge the law to be that said judgment by default against said Sarah D. Partee and her husband was absolutely null and void for this, that neither the said William B., nor the said Sarah D. Partee was served personally with process in said cause; that no pleas were filed nor appearance entered by them, and the said judgment by default was rendered at the return term of the summons or suit, in direct contravention of a positive law of this State, which provides that no judgment by default shall be entered at the return term when it shall appear that the process has not been served personally on the defendants, and was rendered against a married woman, as to whom the note was prima facie void. Nor can the pretended release of errors avail in the said cause, because it is unsupported by any consideration, good or valuable in law, and was not executed according to law. All of which will more fully appear from a transcript of the proceedings in said case, which is herewith filed, marked "Exhibit E," and prayed to be taken as part bill.

On the first day of January, 1867, a writ of fieri facias was sued out of the said circuit court upon said judgment, or pretended judgment, which was levied by one John T. Heth, who pretended to act as deputy-sheriff of said county of Yazoo, upon the lands situate in the said county of Yazoo, and conveyed in and by said trust-deed to the said Robert Bowman, trustee. This writ was issued at the instance and request of said Bowman, claiming to act as attorney for the said James Stewart. The fieri facias, levied as aforesaid, was returned into court on the 9 April, 1867; and on the 7th December, 1868, the said Bowman sued out of said court a writ of venditioni exponas, directed to the sheriff of said Yazoo County, and commanding him to sell said lands so levied upon as aforesaid. This writ has upon it the following endorsements:

"Rec'd Dec. 8, 1868.

"S. M. DYER, *Sh'ff*,
"JOHN T. HETH, *D. S.*"

And

"The within-described property sold Jan'y 5th, 1869, for five thousand seven hundred dollars; applied to costs $93.50; to plaintiff's money, $5,656.56; and defendants have no further goods or chattels, lands or tenements, in my county, where any further sum can be made.

"S. M. DYER, *Sheriff*,
"By JOHN T. HETH, *D. S.*"

All of which will more fully appear by reference to copies of
7 said writ herewith filed, marked "Exhibit F," and prayed to be taken as part of this bill.

From said record it appears that the sheriff of said county did not return on said writ of fieri facias that the lands levied on by virtue of the same remained in his hands unsold, and that said writ of venditioni exponas was not issued until nearly two years had expired after the pretended levy of said execution and the return thereof. Your orators are therefore advised, believe, and charge the law to be, that this was unwarranted by law; that the said writ of vendi. ex. was improvidently and illegally issued, and did not authorize the sale of said Yazoo County lands, and that the sale of said lands under said writ passed no title to the purchaser.

Your orators further state that they are informed, believe, and state that the said Heth was not the deputy sheriff of said Yazoo County when the the said writ of fieri facias was levied, nor when said pretended sale of said lands was made, and that he had no authority in law to make sale thereof. Notwithstanding which, however, the said S. M. Dyer, sheriff of said county, on the 5th day of January, A. D. 1869, executed to James Stewart, the creditor in said judgment, a deed in which the rendition of said judgment, the issuance of a writ of fi. fa. thereon, the levy thereof upon the said lands in Yazoo County, and the return of said writ, the issuance of said vendi. exponas are recited, and the statement made that, on the 5th day of January, 1869, after giving due and timely notice of the time, place, and terms of sale according to law, the said lands were exposed to sale at public auction before the court-house door in Yazoo City, when and where said James Stewart became the purchaser of part of said lands, to wit, lots 3, 4, 5, 6, 7, & 8, & 28 acres lot 1, section 5, all section six, northeast quarter section 8, township 9, range 4 west; north half section 1, northwest quarter section 2, northeast quarter section 3, township 9, range 5 west; lot 7, section 31, lot 7, section 32, township 10, R. 4 west; lot 6, section 34, lot 7, section 35, lot 5, section 36, township 10, range 5 west, for the sum of $5,200, that being the highest and best bid for said lands.

For said consideration the said sheriff granted, bargained, and sold said lands to said Stewart. The deed was acknowledged and delivered to said Bowman, February 18, 1869, and a copy of it is herewith filed, marked "Exhibit G."

On the said 4th day of January, 1869, the said sheriff executed another deed, by which all the rest and residue of said lands in Yazoo County were conveyed to James D. Partee, the son of said William B. and Sarah D. Partee, for the consideration of $550. Said deed, though dated the 4th day of January, 1869, was not acknowledged or delivered until the 14th day of said month; all of which will more fully appear by reference to a copy of said deed, which is herewith filed as Exhibit H and prayed to be taken as a part of this bill.

The return on the writ of vendi. ex. shows that the said Yazoo County lands were sold on the 5th day of January, 1869, but does not indicate to whom, nor is there made in said return any memorandum in writing of the name of the purchaser, nor the party to whom the lands were adjudicated at the sale, nor that the law in such case made and provided was complied with *it* at all. In fact, there was no notice, or, at best, no such notice as the law required, given of the sales of said lands under said writ of venditioni exponas.

Your orators are advised, believe, and charge the law to be, that writs of venditioni exponas confer no new power on sheriffs, but only re-
8 quire them to do what they were authorized to do by the execution which preceded them, and that in this State such writs can only be lawfully issued when lands or property "taken in execution remain in the hands of the officer unsold," and when this fact "is returned by the officer in the execution;" and not only this, but such writ must be issued as soon as the facts are disclosed by the record. They are further advised, believe, and charge the law to be, that a long, unreasonable, and unexplained delay in the issuance of any such writ of venditioni exponas absolutely avoids the writ in toto, and all things done under color thereof are void or certainly voidable.

Wherefore, upon said exhibit and the law thereon arising, your orators charge that the said sales by said sheriff, S. M. Dyer, sheriff, &c., under said writ of venditioni exponas are absolutely null and void, or at best, voidable, for the following reasons:

1. The said writ was issued without the authority of law, and in direct contravention of the statute.

2. The return upon said writ of venditioni exponas fails to state the facts which the statute requires as conditions precedent to a judicial sale under final process.

3. The judgment of which the sale is predicated was rendered against a married woman at the return term of the summons issued in said case, without personal service of process, or appearance of parties, or at least on defective service of process, and is void, or at least voidable.

4. The alleged release of errors contained in said proceedings is absolutely void, and imparts no validity to said judgment, being unsupported by any consideration good or valuable in law, and made by a feme covert.

5. The sale under said venditioni exponas was not advertised according to law, nor made on a sale day provided by law, and the return thereon does not show that any one became the purchaser of said lands.

6. There is not entire uniformity in the return on said writ and the deeds under which the parties claim title.

7. The proceedings under which said sales were made were fraudulent, and intended to hinder, delay, and defraud the creditors of said William B. & Sarah D. Partee.

8. The sheriff failed to give the notice of sale required by law, and the return to said writ does not state the names of the purchasers, nor how the lands were sold, nor the place at which they were sold, nor that the same were advertised for sale.

Your orators further state to your honors that neither the said James Stewart nor the said James D. Partee was present at the sale of said lands under said writ of venditioni exponas; that no part of the alleged pur-

chase-money was paid; that the whole thing was managed and directed by said Bowman, the attorney for said Stewart, and the trustee for your orators in said deed of trust; and that said sale was consummated upon an agreement made between said Bowman, William B., and James D. Partee, that part of the lands should be bid in by said Stewart for his debt, and the residue by said James D. Partee, who, with said William B. Partee, agreed in consideration therefor, to pay the fees that were owing by said Stewart to said Bowman, which was done some time after, but not at the time of or before said sale. And this was done to secure the possession and enjoyment of said property to said William B. Partee and Sarah D. Partee, or at least to keep it in the family. For some time prior to said sale the said William B., Sarah D., and James D. Partee were in possession of said lands, enjoying the proceeds and income thereof in common.

9 Your orators further show unto your honors that at the time of the issuance of the execution on said judgment, and at the time said execution was levied on said lands, and at divers and sundry times after the alleged rendition of said judgment and prior to the sale of said lands, the said William B. Partee and Sarah D. Partee had in their possession or subject to seizure and sale under said writ of fieri facias, in said county of Yazoo, ample personalty, over and above their statutory exemptions, consisting of mules, cattle, oxen, farming implements, household & kitchen furniture, wagons, &c., &c., to have paid off and discharged said alleged judgment. This fact was well known, as well to said Bowman and Stewart as to said Dyer, sheriff, and the said personalty would have been levied upon and sold in due course of law but for the order and direction of said Bowman, who, in the matter of said sale, and in fact as to all the matter herein complained of, was, as your orators are informed, believe, and state, the attorney for said William B., Sarah D., and James D. Partee, as well as the attorney for said Stewart.

From the time said trust-deed was given to said Bowman and recorded, as hereinbefore set out, until some time in the year 1869, your orators rested content with the arrangement of their debts, believing, as was represented to them by said Bowman, trustee, that the security for the payment thereof was ample, and confiding in the honesty, integrity, and good faith of said Bowman; and wholly relying upon his good faith, fidelity to his trust obligations, and disposition to do what was his plain duty, to advise your orators if at any time the said trust property and fund was endangered, they failed to give themselves any concern about the matter. This they did for the additional reason that the security for their debt was thought to be ample, and was so represented by said Bowman, and they did not feel disposed to crush an honest debtor who had suffered severely from the late rebellion.

During the year 1869 they accidentally learned that the said Yazoo lands were sold under said Stewart judgment, at the instance of said Bowman, their chosen trustee, and who had failed to give them any notice thereof. Your orators had ample means at any moment to pay off said judgment and all other prior liens on said lands whenever the exigency of the case so required, and would have done so at any time when notified by said Bowman, who was then, and has been ever since the war, a resident of Yazoo City, in said county of Yazoo, and they looked to said Bow-

man to give them such notice, and wholly trusted to him so to do. At no time has he declined the office of trustee in said deed, but, on the contrary, he accepted the office, induced your orators to take said trust-deed by his representations, and yet, prior to the maturity of the first note held by them under said trust-deed and compromise, sued out said execution and had it levied upon said Yazoo County lands; and so your orators say said proceeding on the part of said Bowman was a gross and unpardonable fraud on their rights, and was intended to hinder and delay them.

Your orators further state that the debt reduced to judgment by said Bowman was provided for in and by said trust-deed, and the said Yazoo lands constituted all the real property of the said William B. Partee and Sarah D. Partee of any appreciable value, the lands in Tallahatchie and Sunflower Counties being wild and uncultivated, and long since sold for taxes. The sale, under said writ of venditioni exponas, was made at a time when lands at forced sales would bring nothing, as said Bowman and said William B. and Sarah D. Partee knew, and when no opposition in bidding could be reasonably anticipated, for the purpose of hindering and delaying your orators. Neither the said Stewart nor the said James D. Partee are bona fide purchasers of said lands without notice and for a valuable consideration; but, on the contrary, both knew of the existence of your orators' said trust-deed and of all the infirmities in their said executed titles, and neither paid any money for said lands at the time of the sale or afterwards.

Your orators further state that about the 8th March, 1869, when they learned of said sale under said Stewart judgment, they wrote to said Bowman, expressing their great surprise thereat, and received a reply from him, in which he claimed that, for some technical pretense, said Partee and himself treated said trust-deed as a nullity, when they both knew your orators had in good faith accepted said new notes and trust-deed, and were reposing upon them with the utmost confidence, superinduced by their joint representations. Notwithstanding which, they had property sold under execution which they knew to be worth at least forty thousand dollars, and which said Bowman himself represented to be worth fifty thousand dollars, for the sum of $5,750, which sum was fixed by agreement of parties to be bid as heretofore stated, and in consummation of a fraudulent purpose to hinder, delay, and defraud your orators; and the more perfectly to effect said purpose, had the sale made to persons who paid no money, and who did not even pay the costs in the cause until the 19th day of June, 1867. Your orators further state that said Bowman is closely connected by affinity with the said Partees, and ever since the sale of said lands, under said venditioni exponas, the said Partees have been in possession thereof.

Your orators further show unto your honors that on the 13th day of January, A. D. 1869, the said James D. Partee and his wife, Isanie Partee, to secure an alleged debt due Stephen O. Nelson, Thomas A. Nelson, and James L. Lamphier, merchants under the style of Nelson, Lamphier & Co., conveyed to the defendant Fountain Barksdale, as trustee, the lands purchased as aforesaid by said James D. Partee, known as "No Mistake," "Tyrone," and "Seven Guns" plantations, and which are hereinbefore described.

This deed of conveyance recites that said Partee was justly and truly indebted to said merchants in the sum of $27,000, being the amount of his notes as set out therein, dated 11th January, 1869, and payable to his order and endorsed, and also for the sum of five thousand dollars for any supplies which they might advance to him, and was desirous of securing the same, and therefore said lands were sold and conveyed to said trustee, upon conditions that if default was made in the payment of the alleged debts and notes secured thereby the said trustee might sell to the highest bidder for cash, &c., &c.

By this deed all the right, title, claim, and interest which said Partee had in the estate of his grandfather, Christopher Todd, which were obtained from his mother and one Christopher T. Calhoun, were sold to said trustee for the same purpose. This deed bears upon its margin the words, "Satisfied Feb'y 26, 1870. Nelson, Lamphier & Co.," and a copy of it is herewith filed, marked "Exhibit I," and prayed to be taken as part of this bill.

On the 24th day of February, A. D. 1870, the said James D. Partee and wife conveyed by deed of that date to the said Fountain Barksdale, as trustee for the said Nelson, Lamphier & Co., the same premises conveyed by said deed of January 3, 1869, to secure a debt of $33,500, and plantation supplies to the amount of $8,000. This deed contains
11 the same conditions as are set out in the other, was duly executed, and a copy thereof is herewith filed as Exhibit J, and prayed to be taken as a part of this bill.

On the 10th day of August, A. D. 1871, the said James D. Partee and wife conveyed to the said Barksdale, as trustee for said Nelson, Lamphier & Co., to secure an alleged debt of $33,500, as represented by the notes set out in the deed of the year 1870, his note for $2,000 and supplies then furnished of $1,515, the crops of cotton to be grown on said plantation during the said year 1871. This deed recites that the supplies contemplated by said deed of 1870 had been paid, and a copy thereof is herewith filed as Exhibit K, and prayed to be taken as a part of this bill.

On the 26th day of April, 1872, the said James D. Partee and wife conveyed to said Barksdale, as trustee for said Nelson, Lamphier & Co., to secure said debt of $33,500 and certain plantation advances, the crop to be grown on the Lake Dick plantation during the said year 1872, a copy of which conveyance is herewith filed as Exhibit L, and prayed to be taken as a part of this bill.

On the 10th day of June, 1872, the said Barksdale, trustee, executed and delivered to said Thomas A. Nelson, a member of said firm, a deed conveying the said lands included in the said trust-deed of 1870 for the consideration of $3,100 cash in hand paid, a copy of which is herewith filed as Exhibit M, and prayed to be taken as a part of this bill.

Upon said exhibits and from information and belief your orators charge and state that at the time the said trust-deeds of 1869 and 1870 were executed the said James D. Partee was not indebted to the said Nelson, Lamphier & Co. either in the sum of $27,000 or in the sum of $33,500, but both of said sums represented antecedent debts of the said William B. and Sarah D. Partee, and which were secured by said deeds at the instance and request of the said W. B. Partee; that all monies advanced and loaned by said firm to the said James D. Partee, either in the shape of

supplies or otherwise, were fully paid off and discharged by said James D. Partee; that the greater portion of said "old debt" was also paid off and discharged; that the other premises than said lands conveyed by said deeds were and are ample security for said old debts or the balance due upon them; that at the time of the sale by said Barksdale, trustee, the balance due upon said old debts was a sum not exceeding three or four thousand dollars; that the sale under said trust-deed by said Barksdale was made upon a secret agreement and understanding between said James D. Partee and said Nelson, Lamphier & Co.; that the same was not to operate as a complete sale and conveyance, but even after the sale that the said James D. Partee was to have the benefit of redemption; that said James D. Partee, William B. Partee, and Sarah D. Partee are still in possession of said lands and have been ever since the late war, and have continually received, used, and appropriated the rents, issues, and profits thereof; that long prior to the execution of any trust-deed by said James D. Partee and wife to said Barksdale your orators' said trust-deed was of record in the said county of Yazoo; that your orators' said trust-deed was filed and recorded in the said county of Yazoo on the 19th day of November, 1866, and the said Nelson, Lamphier & Co. and said Barksdale were fully apprized of that fact, and had notice of all the facts in connection therewith, and of the rendition of said judgment, and the infirmities in said executive titles, as hereinbefore set out; and the said Thomas A. Nelson and his said firm are not bona fide purchasers for value and without notice of the said Yazoo County lands.

12 Your orators further state that the said firm of E. Dupassier & Co., after the execution of said trust-deed, suspended business, and your orator A. Bidault was legally appointed liquidator of their business, and is entitled to demand, have, receive, receipt for, and collect the said notes executed and delivered to them as aforesaid. Inasmuch, therefore, as your orators are without remedy, save in a court of chancery, they pray that the said William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Fountain Barksdale, Thomas A. Nelson, and James Stewart be made parties defendant hereto, and compelled to answer, but not under oath, all the allegations hereof, and particularly let them answer under oath the interrogataries hereto append' and propounded to them.

And on final hearing, your orators' now offering to redeem said lands and pay off said Stewart judgment, if valid, pray that the said execution titles be vacated, set aside, and for nothing held, and your orators decreed to pay to said Stewart the amount of his said judgment, if to your honors it shall seem meet and proper, your orators in that event hereby offering to do so; that an account be taken and stated of the amounts received, as well by said Stewart as by said James D. Partee, of the rents, issues, and profits of said lands from the day of the alleged sale of said lands until the final hearing, and that they be decreed to pay the same, the amount of said judgment being allowed said Stewart as a credit thereon; that the said deed by said Barksdale, trustee, to said Nelson be vacated and set aside; that an account be taken and stated of the amount due your orators upon said notes, and the amount due such other creditors secured thereby as may choose to come in and prove their claims thereunder, and the said William B. Partee and said other defendants decreed to pay the same on some future day to be named; that a new trustee be appointed in the place of said

Bowman, and, upon default made by said defendants of the amounts due your orators, that said new trustee be decreed to sell said Yazoo County lands, or so much thereof as may be of value sufficient to pay the amount due your orators; and that said defendants be enjoined from asserting title to said lands. Or, if mistaken in the relief sought, then for such other, further, and final relief and decree as to equity belongs and your orators' case requires.

In the mean time your orators pray that a receiver be appointed to take possession of said Yazoo County lands and have the same from year to year under the orders of your honorable court, until the final hearing.

May it please your honors to grant your orators the gracious writ of subpœna, directed, &c., commanding, &c., and as in duty bound, your orators will ever pray, &c.

NUGENT & YERGER &
A. M. HARLOW,
Sol's for Compl't.

Interrogatories to Robert Bowman, esq.

Int. 1. State who were present at the sale made by the sheriff of Yazoo County under the writ of venditioni exponas issued in the case of James Stewart vs. William B. and Sarah D. Partee, and by whom, in person, the lands sold under that writ was bid in. How did it happen that part of the lands purchased were adjudicated to James Stewart for $5,200, and part to James D. Partee for $520? What preliminary arrangements
13 were made touching said sale? What negotiations were made between you and your firm as attorneys for said Stewart and the said Partees, or either of them? What induced these negotiations? What, at the time of the sale, was the value of the lands adjudicated to said Stewart, and what that of the lands conveyed by the sheriff to James D. Partee? Was there not, prior to said sale, some agreement between your firm and the said William B or James D. Partee as to said sale and purchase? Was there any money paid on the day of the sale? If so, to whom, and how much?

Int. 2. For what purpose and why was the "release of errors" filed in the said case of Stewart vs. Partee? What induced it? At whose instance was it made? Upon what consideration and agreement?

Int. 3. Why did you not, and why did not said William B. Partee notify the complainants that the Yazoo County lands were to be sold under said writ of vendi. exponas? Did you not know that they would have paid the judgment before seeing the land sacrificed?

Int. 4. By whom and when was your fee in said case of Stewart v. Partee paid?

Int. 5. File copies of all letters from you or your said firm of Wilkinson & Bowman to said Stewart touching said judgment and sale, and all from him to yourselves?

Int. 6. Why did you so long delay the issuance of said writ of venditioni exponas after the return of the execution issued in said case of Stewart vs. Partee and wife?

Int. to William B. Partee and James D. Partee.

Int. 1. Why did you not notify the complainants of the sale of the

Yazoo County lands owned by Mrs. Partee under the writ of venditioni exponas in case of Stewart vs. Partee, said county, so that they might have opportunity to pay the judgment?

Int. 2. What was the value of the lands at said sale which was adjudicated to said James D. Partee; how many plantations were comprised in them; how did it happen that the bid was exactly five hundred and fifty dollars; to whom and when was this money paid?

Int. 3. Did you not compromise the judgment of Stewart; if so, when; who conducted the matter for you; why was the release of errors filed in the case of Stewart vs. Partee & wife; who wrote it; what induced you to make it; what consideration supported it? Answer fully.

Int. 4. Why was there such delay between the return of the execution in said case and the issuance of the writ of venditioni exponas?

Int. 5. Did you not purchase the judgment rendered in said case prior to or after the issuance of the execution or vendi. exponas; when and how and in what manner was it paid for; who negotiated or effected the sale?

Int. 6. Were you present when the lands were sold under said writ of venditioni exponas; when were they sold, and by whom; was there any money paid by any person on the day of sale; if so, how much and to whom?

Int. 7. Who is now in possession of said Yazoo County lands; where have the said William B. Partee and Sarah D. Partee been living ever since said sale?

Int. 8. In what manner and when was the debt to Nelson, Lamphier & Co. secured by the trust-deeds filed with this bill contracted; for what purpose; how did said James D. Partee come to owe them anything; who made the examination of the records of Yazoo County for them, when or before the trust-deed was given; did they or their attorneys inspect the records at all; who were their attorneys?

14

Int. to James Stewart.

Int. 1. State how it happened that at the sales of lands made under the writ of venditioni exponas issued in your suit against William B. Partee and wife, part of the lands were adjudicated to you for $5,200, and part to James D. Stewart for $550. Was not your judgment compromised? If so, when, and who effected it?

Int. 2. File all letters ever received by you from R. Bowman, esq., or Wilkinson & Bowman touching said case in any manner; and particularly as to the rendition of judgment in full, the levy on said lands, and their sale.

Int. 3. Did you ever pay said Bowman & Wilkinson and Bowman a fee in said case? If so, when, and how much?

Int. 4. Did you not or did not your attorneys prior to said sales have some understanding with said William B. Partee or James D. Partee touching the same; and was it not under said understanding that the sales were made and the lands bought by said James D.; what was that understanding?

(Endorsed:) Filed this April 1st, 1873; also Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and 30 notes of Partee and wife. Geo. T. Swann, clerk.

Exhibits Nos. 1 to 30.

EX. 1.

$1,000.] YAZOO CITY, MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed on back:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by a deed in trust to the Canal Bank of Louisiana, recorded in my office November 19, 1866.

M. A. JENKINS, *Clerk.*

[6 cents U. S. inter. rev. stamp.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

EX. 2.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Or-
15 leans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by deed in trust to the Canal Bank of Louisianar, recorded in my office November 19, 1866.

M. A. JENKINS, *Clerk.*

[6 cents inter. rev. stamp.]

Filed with bill, 1 Ap'l, 1873.

GEO. T. SWANN, *Clk.*

EX. 3.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first day of January, 1869, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans,

one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000,00 is secured by deed in trust to the Canal Bank of Louisiana, recorded November 19th, 1866, in my office.

M. A. JENKINS, *Clerk.*

[6 cents U. S. inter. rev. stamp.]
Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

Ex. 4.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000,00 is secured by deed
16 in trust to the Canal Bank of Louisiana, recorded in my office November 19th, 1866.

M. A. JENKINS, *Clerk.*

[6 cents U. S. inter. rev. stamps.]
Filed with o. bill, 1 Ap'l, 1'73.

G. T. SWANN, *Clk.*

Ex. 5.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Cana Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. D. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo,

hereby certify that the within note for $1,000.00 is secured by deed in trust to the Canal Bank of Louisiana, recorded in my office November 19th, 1866.

M. A. JENKINS, *Clk.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 6.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars secured by deed in trust to J. M. Denman, recorded in my office Nov. 19th, 1866.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, 1873, with bill.

GEO. T. SWANN, *Clk.*

Ex. 7.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Or-
17 leans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISS.,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars is secured to J. M. Denman by deed in trust, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with o. bill 1 Apr'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 8.

$900.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

State of Miss.,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify the within note for nine hundred dollars is secured by deed in trust to J. M. Denman, recorded in my office Nov. 19th, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill 1 April, 1873.

GEO. T. SWANN, *Clk.*

Ex. 9.

$900.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

State of Mississippi,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars is secured by deed in trust to J. N. Denman, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

G. T. SWANN, *Clk.*

18 Ex. 10.

$900.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1871, I promise to pay to *to* the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine

hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISS.,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars is secured by deed in trust to J. M. Denman, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

Filed with bill 1 Ap'l, '73.

G. T. SWANN, *Clk.*

EX. 11.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred and twenty dollars is secured by deed in trust to E. Dupassier & Co., recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk,*
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

GEO. T. SWANN, *Clk.*

EX. 12.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

19 STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo,

do hereby certify that the within note for seven hundred & twenty dollars is secured by deed in trust to E. Dupasseir & Co, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with o. bill.

GEO. T. SWANN, *Clk.*

Ex. 13.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSOURI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred and twenty dollars is secured by deed in trust to E. Dupasseir & Co., recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 14.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred & twenty dollars is secured by deed in trust to E. Dupasseir & Co, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

20 Ex. 15.

$720.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

State of Mississippi,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred and twenty dollars is secured by deed in trust, recorded in my office, to E. Dupassier & Co., Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

GEO. T. SWANN, *Clk.*

Ex. 16.

$441.50.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

State of Mississippi,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by deed in trust to Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

Ex. 17.

$441.50.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

21 STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by deed in trust to Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

EX. 18.

$441.50] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by deed in trust to the Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. int. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

G. F. SWANN, *Clk.*

EX. 19.

$441.50.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by a deed in trust, recorded in my office, to the Union Bank, Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

GEO. T. SWANN, *Clk.*

22 Ex. 20.

$441.50.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for 441.50 is secured by deed in trust to Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, 1873.

GEO. T. SWANN, *Clk.*

Ex. 21.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-three dollars is secured by deed in trust to Louisiana State Bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

Ex. 22.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

23 STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred & twenty-three dollars is secured by deed in trust to Louisiana State Bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 April, '73.

GEO. T. SWANN, *Clk.*

EX. 23.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-three dollars is secured by deed in trust to Louisiana State Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

EX. 24.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do

hereby certify that the within note for four hundred and twenty-three dollars is secured by deed in trust to Louisiana State Bank, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 April, 1873.

GEO. T. SWANN, *Clk.*

24 Ex. 25.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-three dollars is secured by a deed in trust to Louisiana State bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with o. bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 26.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Crescent City Bank, at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[5 cents inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that on this fourth day of January, in the year one thousand eight hundred and seventy, at the request of the cashier of & holder of the Crescent City Bank, holder of the original, whereof a true copy is in the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducross, presented said note during banking
25 hours to the proper book-keeper, note-clerk, & paying-teller of the Citizens' Bank of Louisiana, where the same is made payable, demanded of them payment thereof, and was by them answered that no funds had been deposited there to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducross and Joseph W. Jones, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 April, '73. Geo. T. Swann, cl'k.

Ex. 27.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of Crescent City Bank, at the Citizen's Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured to Crescent City Bank by deed in trust, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

26 *Protest.*

[5 cents U. S. inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known, that on this fourth day of January, in the year one thousand eight hundred and seventy-one, at the request of the cashier of and holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducros, presented said note during banking hours to the proper book-keeper, note-clerk & paying-teller of the Citizens' Bank of Louisiana in this city, at their banking-house, where the same is made payable, demanded of them payment thereof and was by them answered that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducros and Joseph W. Jones, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and *and* year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured to Crescent City Bank by deed in trust, recorded in my office on Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EX. 28.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of
27 Crescent City Bank, of New Orleans, La., at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[Internal rev. stamps for twenty-five cents affixed to original protest and cancelled.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known, that on this fourth day of January, in the year one thousand eight hundred and sixty-eight, at the request of the cashier of & holder for the Crescent City Bank, of this city, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and

parish of New Orleans, Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducros, presented said note during banking hours to the proper book-keeper and paying-teller of the Citizens' Bank of Louisiana, in this city, where the same is made payable, demanded of them payment thereof, & was answered that the same would not be paid for want of funds of the drawers, & that no money had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducros and Adolphe A. Lewis, both of this city, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

[5 cents U. S. inter. rev. stamp.]

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Crescent City Bank, of New Orleans, La., at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

28 STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, clerk.

EX. 29.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Crescent City Bank, at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

[SEAL.] M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[5 cents U. S. inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that on this fourth day of January, in the year one thousand eight hundred and seventy-two, at the request of the cashier and holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Marcel T. Dueros, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note during banking hours to the proper book-keeper, note-clerk, paying-teller, and cashier of the Citizens' Bank of Louisiana at their banking-house in this city, where the same is made payable, demanded of them payment thereof, & was by them answered that no funds had been deposited there to pay the same, & that they would not pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Joseph W. Jones and John J. Barnett, witnesses.

29 In testimony whereof I grant these presents under my signature and the impress of my seal of office at the city of New Orleans, on the day and year first above written.

[SEAL.] W. T. DUCROSS,
Not. Pub.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo,

do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

Ex. 30.

$400.] Yazoo Co., Miss., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of Crescent City Bank, at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

State of Mississippi,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded Nov'r 19, 1866, in my office.

[seal.] M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[U. S. inter. rev. stamp, 5 cents.]

United States of America,
State of Louisiana:

By this public instrument of protest be it known that on this fourth day of January, in the year one thousand eight hundred and sixty-
30 nine, at the request of the cashier of & holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducros, presented said note during banking hours to the proper book-keeper, note-clerk, and paying-teller of the Citizens' Bank of Louisiana, in this city, where the same is made payable, demanded of them payment thereof, & was by them answered that the same would not be paid for want of funds of the drawers.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Messrs. Marcel T. Ducros and Joseph W. Jones, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded Nov'r 19, 1866, in my office.

M. A. JENKINS, *Clk.*
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k,

Exhibit A.

This indenture, made and entered into this 19th day of November, in the year eighteen hundred and sixty-six, between William B. Partee and Sarah D. Partee of the first part, and Robert Bowman of the second part, witnesseth:

That for and in consideration of the sum of ten dollars in hand paid by the party of the second part to the said parties of the first part, the receipt whereof is hereby acknowledged, they, the said parties of the first part, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto him, the said party of the second part, the following described lands, to wit: The north half of section ten, the north
31 half of section twenty-four, the southwest quarter of section twenty-four, the southeast quarter and the southeast quarter of northeast quarter of section twenty-seven, township twenty, range two west; the southwest quarter of section five, township twenty-three, range one east; section fifteen, township twenty-three, range two west; the south half of section ten, the southwest quarter of section eleven, the southeast quarter of section twelve, the west half of section twenty-three, the west half of northwest quarter of section twenty-four, township 23, range two west; the north half of northeast quarter, the north half of northwest quarter, of section 18, west half of section 17, all of section 34, the west half of section 35, in township 24, range four (4) west; all of section 23, the north half of section 26, township 24, range four west; all of section 29

& northwest quarter of section 32, in township 24, range 3 west; and east half of section two in township 12, range four west, containing six thousand three hundred and sixty acres, more or less, and lying and being in the counties of Sunflower and Tallahatchie, in the State of Mississippi. And also the following described lands in the county of Yazoo, State of Mississippi, to wit: Lots three, four, five, six, seven, and eight, and 28¼ acres in lot No. one, section five; all of section (6) six, NE. q'r section eight, S. ½ of sec. 9, NE. ¼, S. ½ of NW. ¼ of section 10, east half of NW. ¼ of section eleven, all of section fourteen, W. ½ of NE. ¼, NW. ¼ & S. ½ of section eleven, N. ½ & E. ¼ of SE. ½ of section 15, N. ½ & SE. ¼ of section 23, W. ½ of section 24, T. 9, range 4 west; also, the N. ½ of sec. one & NW. ¼ of section two, northeast q'r of section 3, in township 9, range five west; lots 7 in section 31 & 7 in sec. 32, town. 10, range 4 west; lots six in sec. 34 & 7 in sec. 35; and also lots 4 & 5 in section 36, township 10, R. 5 west; also, NE. ¼ & E. ½ of NW. ¼ sec. 11, W. ½ of W. ½ sec. one, E. ½ of SW. ¼ sec. 2, township 12, range 4 west; and also all the mules, horses, cattle, farming implements, and other personal property of Sarah D. Partee.

To have and to hold the aforesaid lands and personalty, together with all the rights, tenements, and hereditaments, unto him, the said party of the second part, his heirs, and assigns, and the said parties of the first part for themselves, their heirs, executors, and administrators will by these presents forever warrant and defend the same unto him, the said party of the second part, his heirs and assigns forever.

Upon the trusts, however, as hereinafter mentioned in this deed, viz: that whereas the said Sarah D. Partee is indebted to W. J. McLean in the sum of five thousand dollars, due Feb'y 28, 1862, and to John Montgomery in the like sum of five thousand dollars, due Feb'y 25, 1862, and to J. M. Denman in the sum of five thousand dollars, due Feb'y 18, 1862, and also to said Denman in the further sum of four thousand dollars, due May 13th, 1862, and to Wm. Silliman in the sum of two thousand five hundred , due Feb'y 13, 1862, and to Benoist, Shaw & Co. in the sum of twenty-two hundred dollars, due Feb'y 11, 1862, and to said Benoist, Shaw & Co. also the further sum of twenty-three hundred dollars, due Feb'y 7th, 1862, and to William C. Bibb in the sum of five thousand dollars, due December 16, 1861, and to H. Hopkins in the sum of twenty-nine hundred dollars, due March 9th, 1862, and to the Bank of New Orleans in the sum of twenty-three hundred dollars, due Jan'y 29, 1862, and to the Crescent City Bank in the sum of four thousand , due March 23d, 1862, and to the Bank of Louisiana in the sum of five thousand , due Dec'r 23, 1861, and to the Citizens' Bank in the sum of twenty-nine hundred dollars, due March 14, 1862, and to Conner & Son in the sum
32 of three hundred dollars, due Jan'y 21st, 1862, all of which are evidenced by several promissory notes made by said Sarah D. Partee payable to the order of S. O. Nelson & Co., and by them endorsed.

And the said Sarah D. Partee, being further indebted to Connor & Son in the sum of two thousand dollars, due the 10th of October, 1861, and the further sum of two thousand dollars, due 13th October, 1861, and to Dr. J. W. Hunt in the sum of thirteen hundred and thirty-seven dollars, due the 14th of October, 1861, and to Louisiana State Bank in the sum

of four thousand two hundred and thirty-six $\frac{36}{100}$ dollars, due 11th Dec'r, 1861, and to C. C. Peck in the sum of twenty-two hundred and fifty dollars, due Dec'r 11, 1861; to Edward Dupassier & Co. in the sum of two thousand eight hundred and fifty dollars, due 11th Dec'r, 1862, and the further sum of forty-three hundred and forty-nine $\frac{12}{100}$ dollars, due Jan'y 23d, 1862; to J. A. Miller in the sum of thirty-five hundred and forty-seven $\frac{7}{100}$ dollars, due Jan'y 24th, 1862, and also the further sum of five thousand one hundred and ten dollars, due Jan'y 22d, 1862; to the Canal Bank of La. in the sum of five thousand dollars, due January 24th, 1862; also the further sum of five thousand dollars, due 30th Jan'y, 1862; to C. E. Alter the sum of four thousand five hundred dollars, due Feb'y 9th, 1862; to the Union Bank in the sum of four thousand four hundred and fifteen dollars, due Feb'y 16, 1862; to Charles Levy the sum of fourteen hundred and eighty-seven $\frac{56}{100}$ dollars, due 25th March, 1862; to M. Stea, Value & Co. in the sum of twelve hundred dollars, due 20th April, 1862; to Slark, Stauffer & Co. in the sum of one thousand dollars, due 1st May, 1862; to H. Watworth in the sum of thirty-eight eighty-nine $\frac{96}{100}$ dol-,lars due , all of which last-named indebtedness is evidenced by promissory notes made by said Sarah D. Partee to Rockford, Brown & Co., and by them endorsed.

And the said Sarah D. Partee, being also indebted to Rockford, Brown & Co. in the sum of ten thousand dollars, as evidenced by two several promissory notes in the sum of five thousand dollars each, due respectively the 26th of November, 1861, and the 7th of February, 1862; to J. Hemthal & Co. about the sum of one thousand dollars; to Rich'd A. Barkley a balance of about seven hundred dollars, due 1st Jan'y, 1862, and also to other parties, whose names are not now remembered, in small sums not now known, the whole of said indebtedness amounting in the aggregate to about one hundred and twenty-five thousand dollars, exclusive of interest.

And whereas, by reason of the loss of the largest portion of her property from the disasters and destruction of the late war, she, the said Sarah D. Partee, is unable to pay in full all the aforesaid indebtedness in money; and whereas, she is desirous of securing to all her creditors equally and alike, according to the amount she may owe each, with the remnant of her estate, consisting of the aforesaid lands and personalty.

And whereas a large number of the holders of the aforesaid claims against her have signified their consent to release and discharge her from the aforesaid indebtedness upon the aforesaid claims upon her and her husband, the said William B. Partee, reserving to them one-half of the amount of the principal of said claims, to be evidenced by promissory notes to each creditor respectively, bearing date the day hereof, payable in five annual instalments, to wit, on the first of January, 1868, 1869, 1870, 1871, and 1872, with interest at 8 per cent. from date until paid; and for the remainder of the principal, or other half of the face of the aforesaid claims, to take the aforesaid lands in Sunflower and Tallahatchie Counties at ten dollars per acre.

33 Now, therefore, in order to carry out and effect the aforesaid settlement and payment of the aforesaid indebtedness of said Sarah D. Partee, she, the said Sarah D. Partee, and the said William B. Partee have executed and delivered, and will execute and deliver, to each of the afore-

said creditors five several promissory notes, each bearing date the day hereof, and payable to each of said creditors respectively, or to said Sarah D. & Wm. B. Partee, & by them to be endorsed to each creditor, respectively, for one-half of the principal of the aforesaid indebtedness of Sarah D. Partee in five annual instalments, to wit, the first day of January, in the years 1868, 1869, 1870, 1871, & 1872, bearing interest at eight per cent. per annum from date until paid.

And they, the said Sarah D. Partee and William B. Partee, her husband, have conveyed all the aforesaid described lands & personalty to said party of the second part in trust for the use and benefit of the aforesaid creditors of said Sarah D. Partee, in manner and for the purposes as follows, viz: that he, the said party of the second part, shall have and hold the aforesaid lands described as lying and being in the counties of Sunflower and Tallahatchie Counties, State of Mississippi, for the use, benefit, and behoof of the aforesaid creditors of Sarah D. Partee and their assigns, who shall accept the same at ten dollars per acre in payment and settlement of the indebtedness of said Sarah D. Partee to them for one-half of the principal of their claim, and shall accept for the other half thereof the said last-mentioned promissory notes, payable as aforesaid, on the first days of January, in the years 1868, 1869, 1870, 1871, & 1872.

And the said party of the second part shall, at the request of a majority of the aforesaid creditors, or those holding the largest amount of claims, sell the aforesaid lands at public sale, at such place as he may deem most advisable and proper, for cash, upon notice by advertisement for days of the time and place of said sale in some newspaper in this State which will, in the opinion of said party of the second part, give most general notice thereof; and the proceeds arising from said sale of said lands in Tallahatchie & Sunflower Counties, after deducting all expenses of sale and conveyance, and also 5 per cent. on the amount thereof to be paid to said party of the second part for his services, shall be divided among the aforesaid creditors or holders of the aforesaid first described claims against Sarah D. Partee, according to the amount of their respective claims; or, at the request of any of the aforesaid creditors, the said party of the second part shall make to such creditor a deed in fee-simple for an undivided interest in said lands to an amount or quantity equal to one-half of the aforesaid described claims at ten dollars per acre, that is, each or all of said creditors for every ten dollars of one-half of the principal of their claim shall have at their option conveyed to them one acre of land, he or they paying the said party of the second part the expense of said deed of conveyance, and two and one-half per cent. of the value of said lands for his service; provided, however, if any of said creditors shall refuse to accept of the terms of settlement before mentioned in this deed, and refuse to release, acquit, and discharge the said Sarah D. Partee from her liability on the aforesaid first described claims, then such creditor or creditors aforesaid shall not receive any part of the proceeds of the sale of said lands, but the same shall be applied to the payment of the claims of the other creditors, until one-half of the principal is paid, and if there be any residue, then such residue shall be paid to the holders according to the am't of their claims of said last-mentioned promissory notes; and said refusing
34 creditor or creditors shall have no benefit or interest under this deed, but the property conveyed herein shall inure to the use and benefit

only of such creditors as shall accept the terms of settlement herein mentioned, and shall release, acquit, and discharge said Sarah D. Partee from the aforesaid liabilities first mentioned.

And the said party of the second part, upon the failure of said Sarah D. Partee and William B. Partee to pay at maturity any of the aforesaid last-mentioned promissory notes given in lieu and payment of the aforesaid first described indebtedness of Sarah D. Partee, and which are due on the first days of January, 1868, 1869, 1870, 1871, and 1872, and at the request of the holder or holders of said promissory notes, shall sell the aforesaid described lands lying and being in the county of Yazoo, State of Mississippi, & personalty, or so much or such part thereof as may be necessary to pay said promissory notes so being due, at public sale to the highest bidder, in front of the court-house door of Yazoo City, first giving thirty days' notice of the time and place of sale by advertisement in a public newspaper in the county, and the proceeds arising from said sale shall, after deducting the expenses of sale and five per cent. of the amount thereof to be paid to said party of the second part for his services, be applied to the payment of said promissory notes, principal and interest then due; and as the remainder of said notes shall become due and payable, the said party of the second part, at the request of the holders thereof, shall in like manner sell such amount or quantity of said lands or personalty as may be sufficient to pay the same, after deducting five per cent. for the services of said party of the second part, and the expenses; until all of said promissory notes, principal and interest, are paid, or until said lands and personalty are sold and exhausted.

The said parties of the first part, however, shall remain in peaceable and quiet possession of the said lands in Yazoo County, as well as of the said personal property until the same are sold under the terms and provisions of this deed, and the rents and profits arising therefrom, however, after the payment of all plantation and other necessary expenses, are also conveyed to said party of the second part, to be applied, appropriated, and used for the payment of the aforesaid and last-described promissory notes.

It is further understood and expressly provided that if any of the aforesaid creditors of said Sarah D. Partee shall fail within ninety days from the date of this deed to signify in writing their acceptance of the terms of settlement and payment of their claims or debts as herein provided, said creditor so failing to accept the aforesaid terms will and shall be considered as refusing the same, and the said creditor or creditors so failing to accept shall be barred of benefit, right, advantage, or privilege of the terms and provisions of this deed. If the said parties of the first part shall well and truly pay or cause to be paid all of the aforesaid last-described promissory notes maturing the first day of January, 1868, 1869, 1870, 1871, and 1872, as they shall respectively fall due, then this deed of conveyance of the aforesaid lands in Yazoo County, State of Mississippi, shall be void and of no effect; otherwise in full force and effect.

In testimony whereof the parties of the first part have hereunto set their hands and seals the day and year above written.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE. [SEAL.]

35 The words on page 2 of the forgoing deed, viz: "And also all the mules, horses, cattle, farming implements, and other personal prop-

erty of Sarah D. Partee," interlined and inserted before signing and acknowledging this deed; also word "personalty" on same page, & "seven" on p. 4, & "personalty" on p. 5, and "the principal of" on same page, and "refuse to" on p. 8, and "personalty" on same page and on p. 9, also inserted before signing and acknowledging.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE, [SEAL.]

[U. S. inter. rev. stamps to the amount of $70.00 duly attached & cancelled.]

STATE OF MISSISSIPPI,
Yazoo County:

Before me, M. A. Jenkins, clerk of the probate court in and for the county and State aforesaid, personally appeared William B. Partee, whose name is signed to the foregoing deed, who acknowledged that he signed, sealed, and delivered the same as his own voluntary act and deed for the purposes therein named on the day and year therein written.

And also personally appeared before me Sarah D. Partee, whose name is signed to the foregoing deed, the wife of said William B. Partee, who being by me first examined privately, separately, and apart from her husband, the said William B. Partee, acknowledged that she signed, sealed, and delivered said deed as her own voluntary act and deed on the day and year therein written and for the purposes therein named, freely, without any fear, threat, or compulsion on the part of her said husband.

In testimony whereof I have hereunto set my hand and seal this 19th day of November, 1866.

[SEAL.] M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[U. S. inter. rev. stamps to the am't of $24.00 affixed and duly cancelled.]

THE STATE OF MISSISSIPPI,
Yazoo County, set:

I, M. A. Jenkins, clerk of the probate court of said county, certify that the instrument of writing to which this certificate is attached, from Wm. B. Partee & wife to Robert Bowman, trustee, was filed in my said office for record on the 19th day of Nov., 1866, and that the same has this day been duly made of record therein in book X of the record of deeds, etc., of said county, on pages 129, 130, 131, 132, 133, 134, 135, & 136.

Given under my hand and the seal of said court, at Yazoo City, this 19th day of Nov., eighteen hundred and sixty-six.

[SEAL.] M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[$18.00 U. S. inter. rev. stamps affixed & duly cancelled.]

(Endorsed:) Filed with o. bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EXHIBIT B.

YAZOO CITY, MISS., *Nov. 21st*, 1866.

Mess. HYAMS & JONAS,
New Orleans, La.:

GENTLEMEN: At the request of Mr. W. B. Partee, we have
36 examined the records of this county with the view of ascertaining

what liens or incumbrances are on the property of his wife, Mrs. Sarah D. Partee.

Under the will of Mr. James Dick, from whom the property is derived, there is an annuity of one thousand dollars to be paid to Mr. Jas. Todd during his life-time; and there is also a judgment for about five thousand dollars, which the plaintiff will settle on favorable terms.

Mr. & Mrs. Partee have executed a deed for all of her property of every kind to Robert Bowman, esqr., for the benefit and use of her creditors. As to the fitness and capacity of the trustee, we refer you to Mr. Jas. M. Allen, of the commission house of T. H. & J. M. Allen & Co., and Mess. Hogan & Patton, of N. O.

Under the terms of the deed, six thousand three hundred and twenty acres of land in Sunflower and Tallahatchie Counties are conveyed to the trustee for the benefit of her creditors, they receiving said lands in payment of one-half of their claims, @ 10 per acre. The trustee, at the request of those holding the largest number of claims, shall sell the lands at public auction, upon 30 days' notice, or, at the request of any creditor or creditors, the said trustee shall convey to him or them, by deed in fee-simple, an undivided interest in said lands, at $10 per acre, to an amount equal to one-half of his or their claim or claims.

The remainder or other half of the claims of her creditors shall be evidenced by promissory notes, with 8 % int., to each creditor, payable in five equal annual instalments, on 1st January, 1868, '69, '70, '71, '72, secured by deed in trust to said trustee on all of her property, including lands, mules, stock, farming implements, in Yazoo County, and also the rents & profits of said lands, after deducting the necessary plantation expenses. Upon failure to pay such notes at maturity, the trustee, at request of any creditor or holder of said renewed notes, shall sell, upon 30 days' notice, sufficient property to pay said notes. All the profits of the place, after deducting expenses, shall go to 8 % int. of said notes. Each creditor, within 90 days, is to signify his acceptance in writing of said deed, or be forever barred from all interests or benefit thereof. We deem the property in this county amply and entirely sufficient to secure beyond a doubt the payment of said renewed notes.

Under the laws of this State, the property of a married woman is only liable for family supplies or necessaries, wearing apparel of herself and children, or for household furniture, building and improvements upon her estate; and "no judgment shall be rendered against her unless the liability of her separate estate be first established." And her separate , under the decisions of our supreme court, is not liable, except for such contracts as above stated. Yet she can mortgage her property for the part of her own debt or that of her husband, and thus make it liable. If the creditors of Mrs. Partee accept the terms proposed by her, the new claims or notes will be secured beyond doubt, we think; if they do not, and attempt to coerce payment of the full am'nt of the original claims, under the uniform decisions of our court she could defeat them. She informs us, however, that she does not desire to do this, and will not do it except as a dernier resort. If her property was sold now under execution it would not pay the claims secured by trust deed, with int. on them.

We are, very respectfully, &c.,

WILKINSON & BOWMAN.

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, clerk.

37 EXHIBIT C.

The war caused me a loss of over $300,000, leaving me a debt of $125,000, and nothing but lands to pay with, which at present would not sell for one-half of its nominal value, nor one-half the indebtedness.

In order to place all my creditors on the same basis (four of them having brought suit for about $14,000), propose to pay the face of my indebtedness as follows: One-half in lands in Tallahatchie and Sunflower Counties, Miss., not in cultivation, at $10 per acre; the balance or remaining half in five payments:

1/5, 1 Jan'y, 1867.
1/5, 1 " 1868.
1/5, 1 " 1869.
1/5, 1 " 1870.
1/5, 1 " 1871.

Or, in other words, take up the debt in five years, with 8 % per annum interest, securing the payment by mortgage on the balance of the land I own and now have in part cultivation in Yazoo County, Miss. It was not my wish to make any proposition to my creditors before realizing something to pay them in hand; the action of some of them compels me to act now in the matter in order that all may share alike in the distribution of my assets.

In order to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman & Judge Wilkinson, of Yazoo City, Miss., to see to the proper execution of the deed of trust on the lands in cultivation, and act as trustee, or select proper persons to become so, and also to see to the proper conveyances of the trusts of land to a responsible trustee for the benefit of the creditors for the remaining 50 %.

Messrs. Hvams & Jonas will attend to any of the business which the creditors may choose to place in their hands, and to the distribution of the new notes after they are executed.

New Orleans, 19th July, 1866.

SARAH D. PARTEE,
By W. B. PARTEE.

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EXHIBIT D.

Wm. B. Partee & wife to Robert Bowman. Filed Nov. 19, 1866. Recorded same day, b'k 33 record of deeds, pages 129 to 136.

M. A. JENKINS,
Clerk Yazoo County, Mississippi.

Creditors mentioned in the above deed of trust.

W. J. McLean, $5,000.00—$2,500.00. Returned to W. B. Partee.
John Montgomery, $5,000.00—$2,500.00. do. do.
J. M. Denman & Co. [$5,000.00] [$4,000.00]—[$4,500]. Settled. Old notes returned to Wm. Partee.
Benoist, Shaw & Co., $2,200.00 } $2,250.00. Returned to Wm. Partee.
Do. $2,300.00 }

Wm. Silliman, $2,500.00—$1,250.00. do. do.
W. C. Bibb, $5,000.00—$2,500.00. do. do.
H. Hopkins, $2,700.00—$1,350.00. do. do.
Bank of New Orleans, $2,300.00—$1,150.00. do. do.
Bank of Louisiana, $5,000.00—$2,500.00. do. do.
38 Crescent City Bank, [$4,000.00]—[$2,000.00]. Settled. Old notes delivered up.
Citizens' Bank, Son & Co., Mrs. Partee, [2,700.00]—[1,350.00]. Returned to W. Partee, for Mrs. Partee.
Conner & Son, [3,000.00] } $4,500.00. Settled. Old notes delivered to W'm Partee.
Conner & Son, [3,000.00] }
Do [3,000.00] }
J. W. Hunt, 1,337.00. No notes ever received.
L'a State Bank, [4,230.00]—[2,115.00]. Settled. Old notes delivered to W. Partee.
C. C. Peck, $2,250.00—$1,275.00. Returned to W. Partee.
D. Dapessier & Co., [2,850.54], [4,359.42]—[3,600.00]. Settled, and old notes returned to W. Partee.
J. A. Miller, 3,547.97 } $4,328.95. Notes left for W. Miller not claimed by him.
Do 5,110.00 }
Canal Bank, [10,000.00]—[5,000.00]. Settled, and old notes delivered up to W. Partee.
C. E. Alter, 4,500.00—2,250.00. Returned to W. Partee.
Union Bank, [4,415.00]—[2,207.50]. Settled, and old notes delivered to W. Partee.
Charlotte Levy, 1,487.56. No notes ever received.
No. 9, McStea, Value & Co., [1,200.00]—[600.00]. Settled, and notes delivered to W. Partee.
No. 4, Slark, Stauffer & Co., [1,000.00]—[500.00]. do. do.
H. Walworth, 3,889.96—1,945.00. Returned to W. Partee.
Rockford, Brown & Co., 5,000.00 } No notes ever received.
5,000.00 }
J. Hemthal & Co., 1,000.00. do. do.
Richard H. Barkley, 700.00. do. do.

NEW ORLEANS, 21 *Jan'y*, 1868.

I have this day received back from Mess. Hyams & Jonas all the 12 sets of notes (5 in a set) mentioned in the 2d column above, as returned to me. They were placed with them on deposit to be returned to me if not called for. The other sets he has delivered to the parties entitled to same, and are all bracketed [ ] thus. I have received the original notes so bracketed in the first column, all except those due J. W. Miller, & which will be sent to me when rec'd by Hyams & Jonas.

(Signed) W. B. PARTEE.

The foregoing is a copy of the original in the hands of Geo. Hyams.

(Endorsed:) Filed 1 Ap'l, '73. Geo. T. Swann, clerk.

EXHIBIT E.

STATE OF MISSISSIPPI,
Yazoo County:

Be it remembered that heretofore, to wit, at the May term, 1866, of the

Yazoo circuit court, the following proceedings were had and done before J. A. P. Campbell, judge of said court:

39 *Declaration.*

Circuit court of Yazoo County, May term, 1866.

STATE OF MISSISSIPPI,
Yazoo County:

James Stewart, the plaintiff in this suit, complains of Sarah D. Partee and William B. Partee, the defendants in this suit, that they are indebted to him in the sum of five thousand three hundred and ninety-seven $\frac{87}{100}$ dollars, in that, whereas heretofore, to wit, on the 18th of December, 1861, at, to wit, the city of New Orleans, in the county of Yazoo, the said defendants, by their names and signatures of Sarah D. Partee & W. B. Partee, did make and deliver to Rotchford, Brown & Co. (who are non-residents of the State of Mississippi, and not sued in this action) their, said defendants', certain promissory note, bearing date the day and year aforesaid, whereby they, said defendants, then and there undertook and promised, twelve months after the date thereof, to pay to the order of Rotchford, Brown & Co., at their counting-house, in the city of New Orleans, the sum of fifty-three hundred and ninety-seven $\frac{87}{100}$ dollars, value received, with eight per cent. per annum interest from date until paid, and the said Rotchford, Brown & Co., to whom or whose order payment of said amount of said promissory note was made, afterwards and before payment of said promissory note, to wit, the day and year aforesaid, did endorse said promissory in writing and deliver the same to said plaintiff, by means whereof said defendants became liable to pay the amount of said promissory note to said plaintiff, and being so liable, in consideration then and there undertook and promised to pay the same to said plaintiff, when they should be thereunto afterwards requested; copy of which promissory note is herewith filed, marked "Exhibit A." Plaintiff avers that, although often requested, said defendants have wholly fail'd to pay the amount of said promissory note, or any part thereof, to the damage of said plaintiff ten thousand dollars, and he therefore sues.

WILKINSON & BOWMAN.

Copy Exhibit A.

$5,397.87.] NEW ORLEANS, *December* 18, 1861.

Twelve months after date I promise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, fifty-three hundred and ninety-seven $\frac{87}{100}$ dollars, value received with eight per cent. per annum interest after maturity until paid.

Authorized by me.

(Sig.) SARAH D. PARTEE.
W. B. PARTEE.

(Across the face:) Rotchford, Brown & Co.

Judgment in circuit court of Yazoo County, May term, 1866.

JAMES STEWART)
vs.
W. B. & SARAH D. PARTEE.)

We hereby release all errors in the above-stated case.

40 Witness our hands and seals this 12th day of April, 1867.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE. [SEAL.]

Attest:
C. T. CALHOUN.
Filed April 15, 1867.

G. A. GIBBS, *Clk*,
By E. DRENNING, *D. C.*

(Endorsement on declaration:) James Stewart vs. W. B. Partee et al. Filed April 28, 1866. Gibbs, cl'k. Yazoo circuit court, May term, 1866. $6,894.86. Jud., June 6, '66. Wilkinson & Bowman, P. Q.

Summons.

The State of Mississippi to the sheriff of Yazoo Co., greeting:

You are hereby commanded to summon Sarah D. Partee and William B. Partee, if to be found in your county, so that they appear before the circuit court to be held at the court-house in Yazoo City, in and for the county aforesaid, on the fourth Monday of May next, to answer a complaint filed in our said court by James Stewart, and have then and there this writ.

Issued this 28th day of April, 1866.

[SEAL.] GEO. A. GIBBS, *Clerk.*
[Stamp.]

Endorsement.

This action is founded on defendants' promissory note, payable to Rotchford, Brown & Co., for $5,397.87, dated December 18, 1861, payable twelve months after date, with interest at 8 per cent. per annum from maturity until paid. Said promissory note was indorsed by Rotchford, Brown & Co. to said plaintiff.

The sum actually demanded is the amount of said note with interest thereon until paid. Judgment will be required at the return of this writ. Complaint filed when writ issued.

WILKINSON & BOWMAN,
Attorneys.

GEO. A. GIBBS, *Clerk.*

Executed May 10, '66, by delivering a copy of the within to the within-named parties.

S. M. DYER, *Sh'ff*,
By CHAS. C. DYER, *Deputy.*

May term, 1866, of Yazoo circuit court, 10th day of term, the same being the 6th day of June, 1866, the following judgment was rendered, to wit:

JAMES STEWART)
vs.) A. 137.
SARAH D. PARTEE.)

This day came the plaintiff, by attorney, and the defendants, being called to answer plaintiff's complaint, came not, but made default. Whereupon it is considered by the court that plaintiff recover of defendants the sum of $6,894.86 (six thousand eight hundred and ninety-four
41 dollars and eighty-six cents), amount in plaintiff's complaint mentioned, and also his costs in this behalf expended, and plaintiff grants stay of execution six months.

J. A. P. CAMPBELL, *Judge*.

To GEORGE A. GIBBS,
Clerk of the Circuit Court of Yazoo County, State of Mississippi.

The petition of William B. Partee and Sarah D. Partee respectfully represents that on the sixth day of June, A. D. 1866, James Stewart obtained a judgment, in the circuit of Yazoo County, against your petitioners for the sum of six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars, together with the costs of suit; that said judgment was obtained on a contract made prior to the 1st day of June, A. D. 1865; that your petitioners, feeling themselves aggrieved by the judgment and recovery aforesaid, desire to have the same reviewed by the high court of errors and appeals of the State of Mississippi, and for that purpose pray for a writ of error with a supersedeas, returnable to the next June term of said high court of errors and appeals of the State of Mississippi, to be held at Macon, and herewith tender their bond, with sufficient sureties, as required by law.

February 18, 1868.

SARAH D. PARTEE.
W. B. PARTEE.

Bond.

Know all men by these presents that we, William B. Partee and Sarah D. Partee, principals, and James D. Partee and William Partee, sureties, are held and firmly bound unto James Stewart in the sum of two hundred dollars, the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, and assigns firmly by these presents. Sealed with our seals and dated this 18th day of February, A. D. 1868.

The consideration of the above obligation is this: That whereas, in the circuit court of Yazoo County, State of Mississippi, on the sixth day of June, A. D. 1866, the above-named James Stewart recovered a judgment against the above-bounden William B. Partee and Sarah D. Partee for the sum of six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars, together with costs of suit; and the said William B. and Sarah D. Partee, feeling

aggreived by the judgment aforesaid, and desiring to have the same reviewed by the high court of errors and appeals, have applied to the clerk of the circuit court of Yazoo County for a writ of error with supersedeas, removing said cause to the high court of errors and appeals, to be held at Macon on the first Monday of June next, which has been granted them on the execution of this bond.

Now, if the said William B. and Sarah D. Partee shall prosecute with effect the said writ of error, or in case they fail therein shall well and truly pay all costs that may be awarded against them, then this obligation to become void; otherwise to remain in full force and virtue.

SARAH D. PARTEE. [SEAL.]
W. B. PARTEE. [SEAL.]
J. D. PARTEE. [SEAL.]
W. PARTEE. [SEAL.]

42 STATE OF MISSISSIPPI,
Yazoo County:

Before me, Geo. F. Mellen, a justice of the peace in & for the county & State aforesaid, personally appeared James D. Partee & William Partee, sureties in the foregoing bond, who on oath say they are worth the penalty thereof in property not exempt from execution over and above their debts and liabilities.

J. D. PARTEE.
W. PARTEE.

Sworn and subscribed to before me this the 18th day of February, 1868.
[SEAL.] GEO. F. MELLEN, *J. P.*

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Foote, clerk of the circuit court in and for said county, do hereby certify that the foregoing pages contain a true and correct copy or transcript of the papers in the above-stated case, together with the judgment of the court and the execution and vendi., as the same appear of record and on file in my office.

Given under my hand and official seal this 7th day of March, 1873.
[SEAL.] W. H. FOOTE, *Clerk*,
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed 1 April, 1873, with bill. Geo. T. Swann, clerk.

EXHIBIT F.

The State of Mississippi to the sheriff of Yazoo County, greeting:

We command you that of the goods and chattels, lands and tenements of Sarah D. Partee and William B. Partee, lately of our county, you cause to be made the sum of six thousand eight hundred and ninety-four dollars and $\frac{86}{100}$, which James Stewart lately, in our circuit court, has recovered against them for damages which he has sustained by reasons of the non performance of a certain promise and assumption by the said Sarah D. Partee and Wm. B. Partee to the said James Stewart, lately made, with interest at the rate of 8 per centum per annum from the 6th day of June,

A. D. 1866, until paid. Also the sum of $12.00 for costs and charges by him about his suit in that behalf expended, whereof the said Sarah D. Partee and Wm. B. Partee convicted, appears to us by record; and that you have the said sums of money before the judge of the fifth judicial district of the State aforesaid at a circuit court to be holden at the court of Yazoo County on the fourth Monday of May next, to render to the said James Stewart for his damages and costs aforesaid. And have then and there this writ.

Issued the 1st day of January, 1867.

[SEAL.]

G. A. GIBBS, *Clerk*,
By E. DREMMIG, *D. C.*

(Endorsed:) Rec'd Jan'y 15, 1867. S. M. Dyer, sheriff, by Jno. T. Heth, d. s.

(Endorsed:)

Levied April 9, 1867, on the following lands, less homestead, to wit: Lots 3, 4, 5, 6, 7, & 8, & 28 acres, in lot 1, sec. 5; all sec. 6; NE. ¼ 43 sec. 8; S. ½ sec. 9; NE. ¼ & S. ½ of NW. ¼ & S. ½ & NW. ¼ of NW. ¼, sec. 10; W. ½ of NE. ¼ & NW. ¼ & S. ½, sec. 11; all sec. 14; N. ½ & E. ½ of SE. ¼, sec. 15; all sec. 16; N. ½ & SE. ¼, sec. 23; W. ½ sec. 24, T. 9, R. 4 W.; N. ½ sec. 1; NW. ¼ sec. 2; NE. ¼ sec. 3, T. 9, R. 5 W.; lot 7, sec. 31; lot 7, sec. 32, T. 10, R. 4 W.; lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36, T. 10, R. 5 W., as property of defendants.

S. M. DYER, *Sh'ff*,
By JNO. T. HETH, *D. S.*

Satisfied as to costs June 19, 1867.

S. M. DYER, *Sh'ff*,
By CHAS. C. DYER, *D. S.*

Vendi. exponas.

The State of Mississippi to the sheriff of Yazoo County, greeting:

You are hereby commanded that you expose to sale, subject to homestead exemption, the following lands, to wit: Lots 3, 4, 5, 6, 7, & 8, & 28 acres in lot 1, section 5; all section 6; NE. ¼ section 8; S. ½ section 9; NE. ¼ & S. ½ of NW. ¼ & S. ½ section 10; W. ½ of NE. ¼ & NW. ¼ & S. ½ section 11; all section 14; N. ½ & E. ½ of SE. ½ section 15; all section 16; N. ½ & SE. ¼ section 23; W. ½ of section 24, township 9, range 4 west; N. ½ section 1; NW. ¼ section 2; NE. ¼ section 3, township 9, range 5 west; lot 7, section 31; lot 7, section 32, township 10, range 4 west; lot 6, section 34; lot 7, section 35; lot 5, section 36, township 10, range 5 west, the property of Wm. B. Partee and Sarah D. Partee, which according to command you have taken, and which remains in your hands unsold, as you have certified to our circuit court of Yazoo County, to the value of $6,894.86, with interest on $6,894.86, part thereof from the 6th day of June, 1866, at 8 per centum per annum until paid, to satisfy James Stewart, the sum aforesaid, whereof in our said circuit court he has recovered execution against William B. Partee and Sarah D. Partee, his wife, by virtue of a judgment in our circuit court of Yazoo County aforesaid. Also the sum of $12.00, clerk's and sheriff's fees, farther in this behalf expended.

And have you the said sums of money before the judge of our said court the 4th Monday of May next, to render to the said James Stewart in satisfaction of the judgment and execution aforesaid. And have then and there this writ.

Witness my hand and seal of said court this 7th day of December, A. D. 1868.

[SEAL.]

G. A. GIBBS, *Clerk*,
By E. DREMMIG, *D. C.*

Clerk Gibbs, 4.00; Sh'ff Dyer, 3.00; printer, 5.00—$12.00.

(Endorsed:) Rec'd Dec. 8, 1868. S. N. Dyer, sh'ff, Jno. T. Heth, d. s

The within described property was sold Jan'y 5, 1869, for five thousand seven hundred dollars; applied to costs $93.50; to plaintiff's money $5,656.50; & defendants have no further goods or chattels, lands or tenements in my county where any further sum can be made.

S. M. DYER, *Sh'ff*,
By JNO. T. HETH, *D. S.*

(Endorsed:) Filed with bill, 1 April, '73. Geo. T. Swann, cl'k.

44 EXHIBIT G.

W. B. Partee, p'r sh'ff, to James Stewart.

Know all men by these presents, that whereas, in the circuit court of Yazoo County, State of Mississippi, on the 6th day of June, 1866, James Stewart recovered judgment against William B. Partee and Sarah D. Partee, his wife, for the sum of six thousand eight hundred & ninety-four $\frac{68}{100}$ dollars and costs of suit, on which judgment a writ of fieri facias was issued from the circuit court, returnable to the May term, 1867, of said court, which writ was directed to the sheriff of said county, commanding said sheriff that of the goods and chattels, lands and tenements of said William B. Partee and Sarah D. Partee he cause to be made the aforesaid sum of money with interest and costs, which writ was duly received by said sheriff, and by said sheriff levied April 9th, 1867, on the following property, to wit:

Lots 3, 4, 5, 6, 7, & 8, and 28 acres in lot 1, section 5; all sec. 6; NE. $\frac{1}{4}$ sec. 8; S. $\frac{1}{2}$ sec. 9; NE. $\frac{1}{4}$ & S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 10; W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ & NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ & E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 15; all sec. 16; N. $\frac{1}{2}$ & SE. $\frac{1}{4}$ sec. 23; W. $\frac{1}{2}$ sec. 24, town. 9, range 4 west; N. $\frac{1}{2}$ sec. 1; NW. $\frac{1}{4}$ sec. 2; NE. $\frac{1}{4}$ sec. 3, township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36, township 10, range 5 west, as the property of said Wm. B. Partee & Sarah D. Partee, all of said lands lying and being in Yazoo County, State of Mississippi; and said writ was duly returned to the said circuit court with said levy endorsed thereon. Afterwards, to wit, on the 7th day of December, 1868, there issued from said circuit court a writ of venditioni exponas, directed to the sheriff of said county, commanding said sheriff to expose to sale the aforesaid lands to the value of the aforesaid sum of money with interest and cost; and whereas I, Samuel M. Dyer, sheriff of said

county, by virtue of said writ, did on the 5th day of January, 1869, after giving due and timely notice of the time, place, and terms of sale according to law, expose said lands to sale at public auction, before the court-house door in Yazoo City, when and where James Stewart became the purchaser of the following parcels of land, to wit, lots No. 3, 4, 5, 6, 7, & 8, & 28 acres in lot 1, section 5; all section 6; the NE. ¼ sec. 8, in township 9, range 4 west; N. ½ section 1; NW. ¼ section 2; the NE. ¼ section 3, township 9, range 5 west; lot 7, sec. 31; lot 7, section 32, township 10, range 4 west; lot 6, section 34; lot 7, section 35; lot 5, section 36, township 10, range 5 west, for the sum of five thousand two hundred dollars, that being the highest and best bid for said land.

Now, therefore, for and in consideration of the premises aforesaid and of the aforesaid sum of five thousand two hundred dollars to me in hand paid by the said James Stewart, the receipt whereof is hereby acknowledged, I do by these presents grant, bargain, sell, and convey to the said James Stewart the aforesaid lands.

To have and to hold the same to him and to his heirs and assigns forever, together with all the appurtenances thereunto belonging, as fully and completely as I am empowered to grant, bargain, sell, and convey by virtue of the proceedings aforesaid, and by law as sheriff as aforesaid.

Given under my hand and seal this the 5th day of January, A. D. 1869.

S. M. DYER, [SEAL.]
Sheriff.

45 STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of the county of Yazoo, S. M. Dyer, sheriff, whose is signed to the foregoing deed, who acknowledged that he signed, sealed, and delivered the same on the day & year & for the purposes therein mentioned as his act and deed.

Given under my hand and official seal Febr'y 18, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clk.*

Filed & recorded Febr'y 19, 1869. $5.50 stamps on deed.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing 3 pages & upper portion of this page contain a true & correct copy & transcript of the deed therein named, together with the certificates thereof as fully & completely as the same appears & remains of record in my office in book Y on pages 483, 484, & 485 of the records of deeds of Yazoo County.

Given under my hand and seal of office this 10th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

Exhibit H.

Wm. B. Partee et ux., per sh'ff, to James D. Partee.

Know all men by these presents that whereas, on the 6th day of June, 1866, in the circuit court of Yazoo County, State of Mississippi, James Stewart recovered judgment for six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars (86,894.86) against William B. Partee and Sarah D. Partee, his wife, on which judgment execution was issued from said court on the 1st day of January, 1867, which execution was directed to the sheriff of said county, commanding said sheriff that of the goods and chattels, lands and tenements of the said William B. Partee and Sarah D. Partee he cause to be made the aforesaid sum of money together with interest and costs. And whereas, on the 9th day of April, 1867, the said sheriff, by virtue of said execution, levied on the following lands as property of said defendants, to wit: Lots No. 3, 4, 5, 6, 7, & 8, and 28 acres in lot 1, sec. 5; all in sec. 6; NE. $\frac{1}{4}$ sec. 8; S. $\frac{1}{2}$ sec. 9; NE. $\frac{1}{4}$ and S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 10; the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ and E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 15; all sec. 16; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 23; W. $\frac{1}{2}$ sec. 24, township 9, range 4 west; N. $\frac{1}{2}$ sec. 1; NW. $\frac{1}{4}$ sec. 2; NE. $\frac{1}{4}$ sec. 3, township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36, township 10, range 5 west, and lying and being in Yazoo County, State of Mississippi, as property of said defendants; and whereas, on the 7th day of December, 1868, a writ of venditioni exponas was issued from the clerk's office of said court, directed to the sheriff of said county,
46 commanding him to expose to sale the aforesaid lands to satisfy the aforesaid sum of money and all interest and costs; which said writ was duly received by said sheriff; and whereas I, Samuel M. Dyer, sheriff, of said county, by virtue of said writ, did, on the first Monday of January, 1869, that being the 4th day of said month, after giving due and legal notice of the time, place, and terms of sale, exposed the aforesaid lands to sale at public auction, before the court-house door in Yazoo City, to the highest bidder for cash, when and where James D. Partee became the purchaser of the following parcels of said lands, to wit: The south half of section nine, the NE. $\frac{1}{4}$ and S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ sec. 10; the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ sec. 15; E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 15; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 23; the W. $\frac{1}{2}$ sec. 24, all in township 9, range 4 west, for the sum of five hundred and fifty dollars (subject to an incumbrance), that being the highest and best bid made for said lands: Now, therefore, for and in consideration of the premises aforesaid, and of the sum of five hundred and fifty dollars to me in hand paid by the said James D. Partee, the receipt of which is hereby acknowledged, I do by these presents grant, bargain, sell, and convey the aforesaid lands to the said James D. Partee, to have and to hold the same to him and his heirs and assigns forever, together with all the appurtenances thereunto belonging, as fully and completely as I am authorized and empowered to grant, bargain, sell, and convey by the proceedings aforesaid and by law as sheriff as aforesaid.

Given under my hand and seal and dated this 4th day of January, A. D. 1869.

S. M. DYER, [SEAL.]
Sheriff.

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of said county, Sam'l M. Dyer, and acknowledged that he signed, sealed, and delivered the foregoing deed for the uses & purposes & on the day and year therein written as his act and deed.

Given under my hand and seal of said court January 14th, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

Filed & recorded Jan'y 14, 1869. $2 stamps on deed.
M. A JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, hereby certify that the foregoing three pages and upper portion of this page contain a true and correct copy & transcript of the deed from Wm. B. Partee et ux., per sheriff, to Jas. D. Partee, together with the certificates & proof thereof, as fully & completely as the same appears & remains of record in my office in book Y, on pages 388 & 389, of the records of deeds of said county.

Given under my hand & seal of office this 8th day of Feb'y, 1873.

[SEAL.] J. M. SUBLETT, *Clk*,
By N. T. PUGH, *D. C.*

(Endorsed:) Filed 1 Ap'l, with bill. Geo. T. Swann, cl'k.

47 EXHIBIT I.

James D. Partee et 'x. to F. Barksdale, trustee, Nelson, Lamphier & Co.

Satisfied February 26, 1870.
NELSON, LAMPHIER & CO.

This indenture, made and entered into this thirteenth day of January, A. D. eighteen hundred and sixty-nine, by and between James Dick Partee and Jeanie Partee, his wife, of the county of Yazoo and State of Mississippi, of the first part, Fountain Barksdale, of the county of Yazoo and State of Mississippi, of the second part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the city of New Orleans, in the State of Louisiana, under the firm name and style of Nelson, Lamphier & Co., of the third part, witnesseth:

That the said James Dick Partee is justly and truly indebted to the said Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the name and under the firm of Nelson, Lamphier & Co., as aforesaid, in the sum of twenty-seven thousand dollars, being the amount of his (James Dick Partee's) thirteen notes, bearing date the eleventh of January, A. D. eighteen hundred and sixty-nine, drawn payable to his own order and by him indorsed, payable at the Canal

and Banking Company, in the city of New Orleans, bearing interest at the rate of ten per cent. per annum after maturity until paid, as follows, to wit, one of one thousand dollars, one of two thousand dollars, and one of two thousand five hundred dollars, payable the tenth day of November, eighteen hundred and sixty-nine; one for one thousand dollars, one of fifteen hundred dollars, one of two thousand dollars, and one of two thousand five hundred dollars, payable on the fifteenth day of December, eighteen hundred and sixty-nine; one for four thousand dollars, one of *one of* three thousand dollars, and one of two thousand, payable on the thirteenth of January, eighteen hundred and seventy; one of two thousand five hundred dollars, one of eighteen hundred dollars, and one of twelve hundred dollars, payable on the fifth day of January, eighteen hundred and seventy; in all, twenty-seven thousand dollars, and also for the sum of five thousand dollars for any supplies which the said Nelson, Lamphier & Co. may furnish the said James Dick Partee to enable him to cultivate his lands.

And whereas the said James Dick Partee is desirous to secure the punctual payment of the same, this indenture witnesseth, that the said James Dick Partee and Jeanie Partee, his wife, in consideration of the premises, and in consideration of the further sum of ten dollars to him paid by the said Fountain Barksdale, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Fountain Barksdale the following real estate and personal property situated in the county of Yazoo and State of Mississippi, together with all the improvements and rights thereunto belonging, to wit: The plantation situated in the county of Yazoo and State of Mississippi, known as "No Mistake" plantation, and also embracing "Tyrone" and "Seven Gums" plantation, described as follows: The south half of section nine, northeast quarter and south half of northwest quarter and south half of section ten, west half of northeast quarter and northwest quarter and south half of section eleven, all section fourteen, north
48 half and east half of southeast quarter of section fifteen, north half and southeast quarter of section twenty-three, west half of section twenty-four, township nine, range four west, together with the improvements now existing on said lands or which may hereafter be placed on them, including dwelling-houses, quarters, barns, stables, and other buildings, gin-houses, gin-stands, saw-mills, engines and steam-boiler; also sixty mules, as well as the wagons, carts, and plantation implements.

The said James Dick Partee also hereby sells, transfers, and assigns to the said Fountain Barksdale all the right, title, claim, and interest which he, the said James Dick Partee, has in and to the estate of his grandfather, Christopher Todd, deceased, and to all securities, mortgages, and liens for the payment and recovery of the same. One portion of said interest he obtained from his mother, Mrs. Sarah D. Partee, and is recorded in Maury County, State of Tennessee. One other interest he obtained from Christopher T. Colhoun, and is recorded in Yazoo County, State of Mississippi.

The said James Dick Partee also bargains and sells, hypothecates and pledges to the said Fountain Barksdale all the crops of cotton and corn (except the portion that may belong to the freedmen on the plantation aforesaid) that may be raised on the tracts of land aforesaid during the present or any future year, until the full payment of the sum of money aforesaid.

To have and to hold the before-described real estate and personal property unto the said Fountain Barksdale, his heirs and assigns forever, in trust, and upon the following conditions, viz: That the said Fountain Barksdale will permit the said James Dick Partee to retain possession of the before-granted, bargained, and sold real estate and personal property until default occurs in the payment of the said thirteen notes, amounting to twenty-seven thousand dollars, or either of them, or any portion thereof; and that upon such default in the payment of said sums or any portion thereof, to the said Nelson, Lamphier & Co., or the holder or holders of said notes (including attorney's fees, should it become necessary to employ an attorney,) or the amount which may be due to the said Nelson, Lamphier & Co., for supplies which they may furnish, the said Fountain Barksdale, trustee, shall, if requested by said Nelson, Lamphier & Co., their assigns or representatives, or by the holder or holders of said notes, take possession of said real estate and personal property herein specified, including the cotton & corn crops raised on said plantation, and proceed to sell the same at public auction to the highest bidder, for cash, first giving thirty days' notice of the time and place of selling said real estate, personal, and other property, by publishing the same for that length of time in some public newspaper published in the said county of Yazoo and State of Mississippi, provided there is a newspaper published in said county; and, if there should be none, then by posting notices in three public places in said county of Yazoo, in said State of Mississippi, setting forth the time and place of said sale (the right of appraisement and redemption of said real estate and personal property being waived by the said James Dick Partee), and the said from the proceeds of such sale, after first deducting or defraying the expenses attending the execution of the trust herein specified, shall pay over to the said Nelson, Lamphier & Co., their assigns or representatives, or to the holder or holders of said notes, the sum of twenty-seven thousand dollars, together with the interest that may have accumulated on the same, and the attorney's fees, if any has been incurred, and pay to the said Nelson, Lamphier & Co. the amount
49 which may be due them for supplies, it being understood and agreed that the said James Dick Partee shall gather and ship to the said Nelson, Lamphier & Co., in New Orleans, for sale, as soon as the same can be gathered and shipped, all the crops of corn and cotton that may be raised from year to year on said tracts of land, except such corn as may be necessary for the use of said plantation, and the proceeds of the same when sold shall be applied, first, to the payment of the supplies which may be furnished by the said Nelson, Lamphier & Co.; secondly, to the payment of the notes aforesaid, made by the said James D. Partee, and, if any balance of the proceeds of the sale shall remain after payment of the supplies and notes aforesaid, then the said balance to be paid to the said James D. Partee.

The said Fountain Barksdale, upon making said sale of real and personal property as herein specified and provided for, shall make to the purchaser or purchasers good, complete, and sufficient titles to the same. But if the said James D. Partee shall well and truly pay at maturity the said thirteen notes, as herein set forth, amounting to twenty-seven thousand dollars, and for supplies which may be furnished by said Nelson, Lamphier & Co., according to the tenor and effect of these presents, then this

conv yance to become null and void, otherwise to remain in full force and effect.

And it is agreed by and between the parties hereto that in the event of the death of the said Fountain Barksdale, or of his becoming unable or unwilling to execute the trust herein specified, or fail to do so when requested by the holder or holders of said notes, then the sheriff or acting sheriff of the said county of Yazoo, and State of Mississippi, shall act as trustee to sell and convey title to said real estate and personal property, and whose acts and doings in the premises shall be as binding and as effectual as if the same had been done by the said .

In witness whereof we have hereto set our hands and seals the day and year first above written.

JAMES DICK PARTEE. [SEAL.]
JEANIE PARTEE. [SEAL.]

I accept this trust.

FOUNTAIN BARKSDALE. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of the county *of the county* of Yazoo, James Dick Partee & Jeanie Partee his wife, who acknowledged that they signed, sealed, and delivered the foregoing instrument of writing on the day and year and for the purposes therein written as their act and deed; and the said Jeanie Partee, being privately examined by me, separate and apart from her husband, acknowledged that she signed, sealed, and delivered the same freely, without any fear, threats, or compulsion of her said husband, as her voluntary act and deed.

Given under my hand and official seal this 14th day of January, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clerk.*

Filed 14th Jan'y, 1869. Recorded Jan'y 15, 1869. 833 stamps on deed.

M. A. JENKINS, *Clerk,*
By M. W. SMITH, *D. C.*

50 THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing nine pages contain a true and correct copy & transcript of the deed from James D. Partee & wife to F. Barksdale, trustee, together with the certificates and proofs thereof, as fully & completely as the same appears & remains of record in my office, in book Y, on pages 389, 390, 391, & 392 of the records of deeds of said county & State.

Given under my hand & seal of office this 10th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Cl'k,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EXHIBIT J.

James Dick Partee et ux. to Fountain Barksdale, trustee, Nelson, Lamphier & Co.

This indenture, made and entered into this the 24th day of February, A. D. eighteen hundred and seventy, by and between James Dick Partee and Jeannie Partee, his wife, of the county of Yazoo and State of Mississippi, of the first part, Fountain Barksdale, of the county of Yazoo and State of Mississippi, of the second part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the city of New Orleans, in the State of Louisiana, under the firm and style of Nelson, Lamphier & Co., of the third part, witnesseth:

That the said James Dick Partee is justly and truly indebted to the said Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the name and under the firm of Nelson, Lamphier & Co., as aforesaid, in the sum of thirty-three thousand & five hundred $\frac{00}{100}$ dollars, being the amount of his, James Dick Partee's, twelve notes, bearing date the twenty-first day of February, A. D. eighteen hundred and seventy, drawn payable to his own order, and by him endorsed, payable at the counting-house of Nelson, Lamphier & Co., in the city of New Orleans, conditioned to bear interest at the rate of ten per cent. per annum after maturity, until paid, as follows, to wit, one note due on the sixth day of November, 1870, for twenty-five hundred dollars; one note due on the tenth day of November, 1870, for twenty-five hundred dollars; one note due on the twenty-fourth day of November, 1870, for fifteen hundred dollars; one note due on the twenty-fourth day of November, 1870, for two thousand dollars; one note due on the seventh day of December, 1870, for twenty-five hundred dollars; one note due on the eighteenth day of December, 1870, for three thousand dollars; one note due on the twenty-sixth day of December, 1870, for fifteen hundred dollars; one note due on the fifteenth day of January, 1871, for five thousand dollars; one note due on the fifteenth day of January, 1871, for five thousand dollars; one note due on the eighteenth day of January, 1871, for thirty-five hundred dollars; one note due on the eighteenth day of January, 1871, for twenty-five hundred dollars; one note due on the eighteenth day of January, 1871, for two thousand dollars. In all,
51 thirty-three thousand five hundred dollars; and also, for the further sum of eight thousand dollars, to cover any supplies which the said Nelson, Lamphier & Co. may furnish him to cultivate his lands, and on which they are to charge him eight per cent. interest and two & one-half per cent. for advancing or accepting.

And whereas the said James Dick Partee is desirous to secure the punctual payment of the same, this indenture witnesseth:

That the said James Dick Partee and Jennie Partee, his wife, in consideration of the premises, and in consideration of the further sum of ten dollars to him paid by the said Fountain Barksdale, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Fountain Barksdale the following real estate and personal property situated in the county of Yazoo and State of Mississippi, together with all the improvements and rights thereunto belonging, to wit: The plantation situated in the county

of Yazoo and State of Mississippi, known as "No Mistake" plantation, and also embracing "Tyrone" and "Seven Gums" plantations, described as follows: The south half of section nine, northeast quarter, and south half of northwest quarter, and south half of section ten; west half of northeast quarter & northwest quarter and south half of section eleven; all of section fourteen; north half and east half of southeast quarter of section fifteen; north half and southeast quarter of section twenty-three; west half of section twenty-four, township nine, range four west, together with the improvements now existing on said lands, or which may hereafter be placed on them, including dwelling-house, store-house, quarters, barns, stables, gin-house, gin-stands, saw-mills, engines, steam-boilers, and machinery; also, all the mules on said plantation, say sixty-two (62) in number, as well as the wagons, carts, and plantation implements now on said plantations.

The said James Dick Partee also hereby sells, transfers, and assigns to the said Fountain Barksdale all the right, title, claim, and interest which he, the said James Dick Partee, has in and to the estate of his grandfather, Christopher Todd, deceased, and to all securities, mortgages, and liens for the payment and recovery of the same. One portion of said interest he obtained from his mother, Mrs. Sarah D. Partee, and is recorded in Maury County, State of Tennessee; one other interest he obtained from Christopher T. Colhoun.

The said James Dick Partee also bargains, sells, hypothecates, and pledges to the said Fountain Barksdale all the crops of cotton, hay, and corn (except the portion that may belong to the freedmen on the aforesaid plantations) that may be raised on the tracts of land aforesaid during the present or any future year or years, until the full payment of the sum of money as aforesaid.

To have and to hold the before-mentioned or described real and personal property unto the said Fountain Barksdale, his heirs and assigns forever. In trust, nevertheless, and upon the following conditions, viz: That the said Fountain Barksdale will permit the said James Dick Partee to retain possession of the before granted, bargained, and sold real estate and personal property until default occurs in the payment of the said twelve notes, amounting to the sum of thirty-three thousand and five hundred $\frac{00}{100}$ dollars, or either of them, or any portion thereof, and that upon such default in payment of said sums or any portion thereof to the said Nelson, Lamphier & Co., or the holder or holders of said notes (including attorney's fee should it become necessary to employ an attorney), or the amount which may be due to
52 the said Nelson, Lamphier & Co. for supplies which they may furnish, then the said Fountain Barksdale, esq., trustee, shall, if requested by said Nelson, Lamphier & Co., their assigns or representatives, or by the holder or holders of said notes, take possession of said real estate and personal property herein specified, including the cotton, corn, and hay crops raised on said plantations (except the freedmen's portion) and proceed to sell the same at public auction to the highest bidder for cash, first giving thirty days' notice of the time and place of selling said real estate and personal & other property by publishing the same for that length of time in some public newspaper published in said county of Yazoo and State of Mississippi, provided there is at the time a newspaper published in said county of Yazoo, and if there should be none, then by post-

ing notices in three public places in said county of Yazoo, in said State of Mississippi, setting forth the time and place of said sale (the right of appraisement & redemption of said real estate and personal property being waived by the said James Dick Partee) and the said Fountain Barksdale, from the proceeds of such sale, after first deducting or defraying the expenses attending the execution of the trust herein specified, shall pay over to the said Nelson, Lamphier & Co., first, the amount which may be due to them for supplies which they may have furnished, not exceeding in amount eight thousand dollars, as well as interest and commissions on the same, and, secondly, shall pay over to the said Nelson, Lamphier & Co., their assigns or representatives, or the holder or holders of said notes, the said sum of thirty-three thousand & five hundred dollars, together with the interest that may have accumulated on the same and the attorneys' fees, if any may have been incurred, and then if any funds still remain in the hands of said Fountain Barksdale, after paying and discharging the obligations aforesaid, then the residue to be by him paid over to the said James Dick Partee.

It is understood and agreed that the said James Dick Partee shall gather and ship to the said Nelson, Lamphier & Co., for sale on his account, as soon as the same can be gathered and shipped, all of the cotton that may be raised from year to year on said plantation or on any other land that he may cultivate (so long as the supplies aforesaid or notes aforesaid or any portion of them shall remain unpaid) except freedmen's portion. The said Fountain Barksdale, upon making said sale of real and personal property as herein specified and provided for, shall make to the purchaser or purchasers, good, complete, and sufficient titles to the same. But if the said James Dick Partee shall well and truly pay at maturity the said twelve notes as herein set forth, amounting to thirty-three thousand & five hundred $\frac{00}{100}$ dollars, and for the supplies which may be furnished by the said Nelson, Lamphier & Co., according to the tenor and effect of those presents, then this conveyance to become null and void, but otherwise to remain in full force and effect.

And it is agreed by and between the parties hereto that in the event of the death of the said Fountain Barksdale or of his becoming unable or unwilling to execute the trust herein specified, or fails to do so when requested by the holder or holders of said notes, then the sheriff or acting sheriff of the said county of Yazoo and State of Mississippi, shall act as trustee to sell and convey title to the said real estate and personal property, and whose acts and doings in the premises shall be as binding and as effectual as if the same had been done by the said Fountain Barksdale.

53 In witness whereof we have hereunto set our hands and seals the day and year first above written.

JAS. D. PARTEE. [SEAL.]
JEANIE PARTEE. [SEAL.]

I accept the trust.

F. BARKSDALE. [SEAL.]
NELSON, LAMPHIER & CO. [SEAL.]

THE STATE OF MISSISSIPPI,
County of Yazoo:

Personally appeared before Wm. Richards, a justice of the peace in and

for the county of Yazoo and State aforesaid, the within mentioned James Dick Partee, and Jeanie Partee, his wife, who severally acknowledged that they signed, sealed, and delivered the foregoing deed of trust as their act and deed, and for the purposes therein mentioned, and on the same day personally appeared the said Mrs. Jeanie Partee, who acknowledged on a private examination, separate and apart from her said husband, that she signed, sealed, and delivered the foregoing deed as her voluntary act and deed, freely and without any fear, threat, or compulsion of her said husband on the day & year therein mentioned.

Given under my hand and seal this the twenty-fourth day of February, 1870.

[SEAL.] WM. RICHARDS, *J. P.*

Filed & recorded Feb. 2[illegible], 1870.
$42.50 I. R. stamps.

S. GALINGER, *Clk.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, hereby certify that the foregoing ten pages & the upper portion of this page contain a true & correct copy and transcript of the deed of trust from James D. Partee & wife to Fountain Barksdale, trustee, together with the certificates & proofs thereof, as fully & completely as the same appears & remains of record in my office in book Z, on pages 608, 609, 610, 611, & 612, of the records of deeds of Yazoo County, said State.

Given under my hand and seal of office this 11th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk,*
By N. F. PUGH, *D. C.*

(Endorsed:) Filed with bill, 1 Ap'l, '73. Geo. T. Swann, cl'k.

EXHIBIT K.

James Dick Partee, for Nelson, Lamphier & Co. F. Barksdale, trustee.—Trust deed.

This indenture, made and entered into this the tenth day of August, in the year eighteen hundred and seventy-one (1871), between James Dick Partee, of the county of Yazoo and State of Mississippi, of the first part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the city of New Orleans and
54 State of Louisiana, under the firm and style of Nelson, Lamphier & Co., parties of the second part, witnesseth:

That whereas, the said party of the first part being indebted to the parties of the second part on the 21st day of February, 1870, in the sum of thirty-three thousand five hundred dollars, being the amount of his, James Dick Partee's, twelve (12) notes bearing date the (21st) twenty-first day of February, 1870, and particularly described in a deed of trust executed by said James D. Partee to secure the same, dated the 24th day of February,

A. D. 1870, duly recorded in deed book Y, page' 608, 609, 610, 611, & 612, of records of deeds of Yazoo County, Mississippi, wherein the said James D. Partee conveyed to Fountain Barksdale, as trustee, and and singular certain personal property and certain real estate, to wit, the "No Mistake" plantation, and also "Tyrone" and "Seven Gums" plantations of the said James Dick Partee, situated in Yazoo County, Mississippi, and particularly described in said deed of trust which was intended to secure the aforesaid twelve promissory notes, as also certain advances in supplies, &c., to be made in the year 1870 by the parties of the second part to the said party of the first part; and whereas said supplies for the year 1870 have been paid off, but said twelve promissory notes are still due and unpaid with interest on the same as specified in said deed of trust; and whereas, on the 8th day of April, 1871, said parties of the second part, at the request of said party of the first part, paid his draft in favor of Edw'd Drenning for the sum of two thousand dollars, being in part payment of a judgment in favor of the estate of Christopher Todd, dec'd, and which bore the first lien on his "No Mistake" plantation, and for which he, the said party of the first part, has executed to said parties of the second part his note for the sum of two thousand dollars ($2,000), dated this day and payable on the 10th December next, with interest at the rate of ten per cent. per annum; and whereas the said party of the second part have furnished said party of the first part goods, monies, and supplies to enable him to cultivate his crops and work his plantations, amounting up to this time to the sum of fifteen hundred and fifteen $\frac{11}{100}$ dollars ($1,515.11) cash, and for which he has this day executed to said parties of the second part his note payable on the 15th December next, with ten per cent. interest from date, say from 10th August, 1871, both of these notes payable at the counting-house of Nelson, Lamphier & Co., New Orleans; and whereas the parties of the second part undertake and agree to furnish to the said party of the first part the means which may be necessary to cover his personal expenses and plantation supplies of his said plantation up to the 1st day of March, 1872, so as to enable the party of the first part to cultivate, harvest, and ship his crops, the said supplies to be furnished either in goods, money, or materials, but in all, from this time to the 1st day of March next, not to exceed the sum of six thousand dollars ($6,000); and whereas the said party of the first part desires to secure the prompt and faithful payment of the said sums to the said parties of the second part, viz, the note of ($2,000) two thousand dollars as aforesaid, the note of fifteen hundred and fifteen $\frac{11}{100}$ dollars as aforesaid, as well as to secure to them all monies they may hereafter pay for him, said party of the first part, between this time and the 1st of March next, for plantation supplies, freights on same, or may pay for him for purposes of personal expense, &c., together with interest on the same at the rate of eight per cent. per annum, and two and one-half per cent. for advancing, the same not to exceed the sum of six thousand dollars as aforesaid:

55 Now, therefore, in consideration of the premises, and in consideration of the further sum of ten dollars cash in hand paid to the party of the first part by Fountain Barksdale, the receipt of which is hereby acknowledged, the said party of the first part has this day granted, bargained, and sold, pledged and hypothecated, and by these presents does hereby grant, bargain, sell, pledge, and hypothecate, to the said Fountain

Barksdale, as trustee herein, his heirs forever, the crops of cotton, corn, hay, and other agricultural productions that may be made as the crops of 1871 on the aforesaid plantation' of "No Mistake," "Tyrone," "Seven Gums," or that may be made on the plantation known as "Lake Dick," which he, the said party of the first part, is this year cultivating, except, however, such portions of the agricultural productions raised in said year 1871 on the said plantations of "No Mistake," "Tyrone," "Seven Gums," and "Lake Dick" as may belong to the freedmen or laborers on said plantations.

And the said party of the first part covenants to and with the said parties of the second part, and to and with the said Fountain Barksdale, trustee herein, that he will cultivate, gather, and put into merchantable and *and* marketable condition, as soon as practicable, the whole cotton crop raised or to be raised on said plantation in the year 1871 as aforesaid, and deliver the cotton as fast as baled and hauled to the said parties of the second part, to be by them sold, and the nett proceeds thereof after paying expenses to be applied as follows, to wit: First, to pay off and discharge the note given by said party of the *second* part as aforesaid of fifteen hundred and fifteen $\frac{11}{100}$ dollars, together with interest on same, it being for supplies already furnished; secondly, to be applied to the payment of any supplies, either personal or plantation, that may be hereafter furnished or be paid for by the parties of the second part between now and the 1st day of March next, the' being furnished at the instance of the party of *the party of* the first part, but not to exceed the sum of six thousand dollars as aforesaid; thirdly, to be applied to the payment of principal and interest of the note of ($2,000) two thousand dollars as aforesaid, which has been executed by the party of the first part in consideration of the payment to the estate of Christopher Todd as aforesaid; and fourthly, to pay over the residue to the said parties of the second part, their assigns or representatives, or the holder or holders of said promissory notes described in the deed of trust referred to as being recorded in deed-book Y as aforesaid, and after this, if any surplus should remain, the same to be paid over to the said James D. Partee. In the event the said party of the first part make default herein and fails, neglects, or refuses to cultivate, gather, and deliver said cotton crops as herein stipulated, or fails to deliver the same in accordance with the terms of this instrument, or otherwise makes default, then and in that case the said Fountain Barksdale shall, as trustee herein, and to that end he is hereby fully empowered and directed to enter upon said plantations and complete the cultivation, gathering, and putting into marketable condition the aforesaid crops of cotton, and he shall ship the same to market in New Orleans, cause the same to be sold, and then apply the nett proceeds as herein provided.

It is agreed and understood that the corn and hay raised on said plantations shall first go towards feeding an' maintaining the animals on the said plantations, and the surplus, whatever it may be, is subject to be sold under this trust.

It is expressly agreed and understood that the execution of this deed of trust shall not in any way, manner, or form impair any security
56 now existing for the payment of the twelve promissory notes aforesaid, and particularly that it shall not impair the security of the deed of trust recorded in book Z as aforesaid, given to secure the same.

It is further agreed by and between the parties hereto that in the event of the death of the said Fountain Barksdale, or of his becoming unable or unwilling to execute this trust, then in that case the sheriff or acting sheriff of said Yazoo County shall act in his stead, and whose acts and doings in the premises will be equally binding as tho' done by the said Fountain Barksdale in person.

In witness whereof the parties to this instrument have hereunto set their hands and seals the day and year first above written.

JAS. D. PARTEE. [SEAL.]
F. BARKSDALE. [SEAL.]
NELSON, LAMPHIER & CO. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, S. Galinger, clerk of the chancery court of said county, James D. Partee, Fountain Barksdale, and Stephen O. Nelson (signing for the firm of Nelson, Lamphier & Co.), and severally acknowledged that they signed, sealed and delivered the same on the day of its date as their act and deed.

Given under my hand and seal of office this 11th day of August, A. D. 1871.

[SEAL.] S. GALINGER, *Clk.*

Filed August 11th, 1871. Recorded August 12th, 1871. $4.00 I. R. stamps affixed.

S. GALINGER, *Clk,*
Per N. A. STEWART.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing nine pages contain a true & correct copy & transcript of the deed of trust from James D. Partee to Nelson, Lamphier & Co., together with the certificates & proofs thereof, as fully & completely as the same appears & remain of record in my office in book D D, on pages 673, 674, 675, 676, & 677 of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office this 13th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed 1 Ap'l, '73, with bill. Geo. T. Swann, cl'k.

EXHIBIT L.

James D. Partee to F. Barksdale, trustee, Nelson, Lamphier & Co.—Trust deed.

This indenture, made and entered into this the twenty-sixth day of April, eighteen hundred and seventy-two (1872), between James Dick Partee, of the county of Yazoo, and State of Mississippi, of the first part, and

Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier,
57 merchants and partners doing business in the city of New Orleans, State of Louisiana, under the firm and style of Nelson, Lamphier & Co., parties of the second part, witnesseth:

That whereas the said party of the first part being indebted to the party of the second part, on the 21st day of February, 1870, in the sum of thirty-three thousand five hundred dollars, being the amount of his (James D. Partee's) twelve notes, bearing date the twenty-first day of February, 1870, and particularly described in a deed of trust executed by said James D. Partee to secure the same, dated 24th February, 1870, and duly recorded in deed-book Z, pages 608, 609, 610, 611, & 612 of the records of deeds of Yazoo County, Mississippi, wherein the said James D. Partee conveyed to Fountain Barksdale, trustee, all and singular, certain personal property and certain real estate, to wit, the "No Mistake" plantation; also, "Tyrone" & "Seven Gums" plantations, of the said James D. Partee, situated in the county of Yazoo, Mississippi, and *and* particularly described in said deed of trust, which was intended to secure the aforesaid twelve promissory notes, as also certain advances in supplies, &c., to be made in the year 1870 by the parties of the second part to the said party of the first part; and whereas said supplies for the year 1870 have been paid off, but twelve said promissory notes are still due and unpaid, with interest on the same, as specified in said deed of trust; and whereas said party of the second part have furnished said party of the first part since the first day of March last, goods and supplies to enable him to make a crop on which is known as "Lake Dick" plantation, amounting to five hundred and sixty-two $\frac{78}{100}$ dollars, for which he has this day executed his note in their favor, due on the 10th day of January next, for the said sum of $562.78, payable at the counting-house of said Nelson, Lamphier & Co., in New Orleans, conditioned to bear interest at the rate of eight per cent. per annum from date; and whereas said party of the second part agree also to furnish said party of the first part with the needful supplies up to the first of February next to enable him to make and harvest the crop on said "Lake Dick" plantation, as well as to furnish him a reasonable amount for personal expenses, the whole note to exceed four thousand dollars; and whereas the *the* said party of the first part desires to secure to the party of the second part the prompt and faithful payment of said sum of $562.78, and interest on same, as well as the amount which may hereafter be furnished him in the shape of plantation supplies and for personal expenses as aforesaid up to the said 1st February next, with interest on same at the rate of eight per cent. per annum, the latter not to exceed the aforesaid sum of five thousand dollars:

Now, therefore, in consideration of the premises, and in consideration of the further sum of ten dollars, cash in hand, paid to the party of the first part by Fountain Barksdale, the receipt of which is hereby acknowledged, the party of the first part has this day granted, bargained, and sold, pledged, and hypothecated, and by these presents doth hereby grant, bargain, sell, pledge, and hypothecate, to the said Fountain Barksdale, as trustee herein, his heirs forever, the crops of cotton, corn, & hay that may be raised this year, 1872, on the plantation known as "Lake Dick," which he, the said party of the first part, is this year cultivating, except, however, such portion of said crops as may belong to the freedmen or labor-

ers on said plantation. And the said party of the first part covenants to and with the said parties of the second part, and to and with the said Fountain Barksdale, trustee herein, that he will cultivate, gather,
58 and put into merchantable and marketable condition the whole cotton crop raised or to be raised on said "Lake Dick" plantation in the year 1872 as aforesaid, and deliver the cotton as fast as baled to the said parties of the second part, to be by them sold, and the nett proceeds thereof, after paying expenses, to be applied as follows, to wit: First, to pay off and discharge the note given by said James D. Partee of $562.78 as aforesaid, together with the interest that may have accumulated on the same. Second, to pay off and discharge the amount for future supplies and for personal expenses which, as before stated, are not to exceed the sum of four thousand dollars, to be furnished by the party of the second part; and thirdly, to pay over the residue to the said parties of the second part, their assigns or representatives, or to the holder or holders of said promissory notes described in the deed of trust referred to as being recorded in deed-book Z as aforesaid, *day* of thirty-three thousand five hundred dollars, and after this, if any surplus should remains, the same to be paid over to the said James D. Partee. In the event that the said party of the first part make default herein and fail, neglect, or refuse to cultivate, gather, and deliver said cotton crop as herein stipulated, or fail to deliver the same in accordance with the terms of this instrument, or ortherwise make default, then and in that case the said Fountain Barksdale shall, as trustee herein, and to that end he is hereby fully empowered and directed to enter upon said "Lake Dick" plantation and complete the cultivation, gathering, and shipping of the said cotton to New Orleans as herein stipulated, and the proceeds to be applied as before mentioned.

It is agreed and understood that the corn and hay raised on said plantation shall first go towards feeding and maintaining the animals on the place, and the surplus, whatever it may be, is subject to be sold under this trust.

It is expressly agreed and understood that the execution of this deed of trust shall not in any way, manner, or form impair any security now existing for the payment of the twelve promissory notes aforesaid, and particularly that it shall not impair the security of the deed of trust recorded in deed-book Z as aforesaid, given to secure the same.

It is further agreed by and between the parties hereto that, in the event of the death of the said Fountain Barksdale, or of his becoming unable or unwilling to execute this trust, then and in that case the sheriff or acting sheriff of said county of Yazoo shall act in his stead, and whose acts and doings in the premises will be equally binding as *the* done by the said Fountain Barksdale in person.

In witness whereof the parties to this instrument have hereunto set their hands and seals the day and year first above written.

JAS. D. PARTEE. [SEAL.]
F. BARKSDALE, [SEAL.]
Trustee.
NELSON, LAMPHIER & CO.

THE STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, J. M. Sublett, clerk of the chancery court of said county and state, the within-named Jas. D. Partee, F. Barksdale, and T. O. Nelson, who acknowledged that they signed, sealed, and delivered the foregoing deed in trust, on the day and year therein mentioned, as their act and deed.

Given under my hand and seal of office this 26th day of April, A. D. 1872.

[SEAL.] J. M. SUBLETT, *Clk.*

59 Filed & recorded April 26th, 1872. $2.50 I. R. stamps affixed.
J. M. SUBLETT, *Clk,*
P'r ROSS.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing seven pages & the upper portion of this page contain a true & correct copy & transcript of a deed of trust from James D. Partee to Nelson, Lamphier & Co., together with the certificates & proofs thereof, as fully and completely as the same appears & remains of record in my office in book G G, on pages 303, 304, 305, & 306 of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office this 13th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with O. B. 1 April, '73. Geo. T. Swann, cl'k.

EXHIBIT M.

Jas. D. Partee et ux., per trustee, to Thos. A. Nelson.—Deed.

Whereas Fountain Barksdale, as trustee to the deed of trust executed on the 24th day of February, in the year eighteen hundred and seventy, by James D. Partee and Jennie Partee, his wife, to secure certain notes therein mentioned, made by the said James D. Partee, payable to his own order and by him endorsed to Nelson, Lamphier & Co., the said deed of trust having been recorded in the office of the probate clerk, in the county of Yazoo, and State of Mississippi, in book Z, pages 608, 609, 610, 611, & 612, did, after giving due notice of the time, place, and terms of sale as required by said deed, and at the request of the holders of said notes, and for the purpose of paying the balance due on the same, offer for sale to the highest bidder for cash, in front of the court-house in Yazoo City, Yazoo County, and State of Mississippi, all of the lands or real estate included in said deed of trust; and whereas Thomas A. Nelson at said sale became the purchaser of all of the different tracts of said land, as hereinbefore mentioned, his being the highest, best, and last bids for the same, it was struck off to him, viz: South half of section 9, township 9, range 4 west, for three hundred dollars; NE. ¼ & south ½ of NW. ¼ & south ½ of section

10, township 9, range 4 west, for six hundred dollars; west ½ of NE. ¼, & NW. ¼ & south ½ of section 11, township 9, range 4 west, for six hundred dollars; all of section 14, township 9, range 4 west, for six hundred dollars; north ½ section 15, E. ½ of SE. ¼ of section 15, township 9, range 4 west, for two hundred dollars; north ½ of section 23, SE. ¼ of section 23, township 9, range 4 west, for five hundred dollars; west ½ of section 24, township 9, range 4 west, for three hundred dollars; and whereas the said Thomas A. Nelson was declared to be the purchaser thereof:

Now, this indenture witnesseth that for and in consideration of the premises aforesaid, and of the payment by the said Thomas A. Nelson of the sum of three thousand one hundred dollars aforesaid, to the said Fountain Barksdale, the receipt of which is hereby acknowledged, the said Barksdale, trustee as aforesaid, hereby grants, bargains, sells, aliens, and conveys, and by these presents doth sell, alien, and convey to the said Thomas A. Nelson and his heirs and assigns, the following described tracts or parcels of land situated in the county of Yazoo, and State of Mississippi, to wit: south half of section 9, NE. ¼ & south ½ of NW. ¼ & south ½ of section 10; west ½ of NE. ¼ & NW. ¼ & south ½ of section 11; all of section 14; north ½ of section 15; E. ½ of SE. ¼ of section 15; north ½ of section 23; SE. ¼ of section 23; west ½ of section 24; all in township 9, range 4 west.

To have and to hold the aforesaid tracts of land, together with the improvements and appurtenances of every kind thereon appertaining thereto, to the said Thomas A. Nelson, his heirs and assigns, it being understood that said Barksdale only conveys such title as is vested in him by reason of said trust deed, and no other.

In testimony whereof the said Barksdale hereunto sets his hand or signature, and affixes his seal on this the 15th day of June, in the year 1872.

FOUNTAIN BARKSDALE, [SEAL.]
Trustee.

The words "grants" interlined before signing, page 3.

THE STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, J. M. Sublett, clerk of the chancery court of said county and State, the within-named Fountain Barksdale, who acknowledged that he signed, sealed, and delivered the foregoing deed as trustee on the day and year therein mentioned as his act and deed.

Given under my hand and seal of office this 15th day of June, A. D. 1872.

J. M. SUBLETT, *Clerk*,
By N. T. PUGH, *D. C.*

Filed June 15th, 1872. Recorded June 15th, 1872. $3.50 I. R. stamps affixed.

J. M. SUBLETT, *Clerk*,
P'r HUBBELL.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby

certify that the foregoing four pages contain a true & correct copy & transcript of the deed from James D. Partee & wife, per trustee, to Thos. A. Nelson, together with the certificate and proofs, as fully & completely as the same appears & remain of record in my office in book HH, on pages 588 & 589 of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office this 14th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk*,
By N. T. PUGH, *D. C.*

(Indorsed:) Filed with bill, 1 Ap'l, '73. Geo. T. Swann, cl'k.

And on this same day & date of the filing of the aforesaid bill
61 & exhibits, to wit, April 1st, 1873, a subpœna issued from the clerk's office of said court, which said subpœna has not been returned into court.

And afterwards, to wit, on the 30th day of April, A. D. 1873, the answer of Robert Bowman was filed in the clerk's office of said court, which, with the exhibits (2) thereto, are in the words & figures following, to wit:

Answer of Robert Bowman.

To the honorable the judge of the circuit court of the United States for the southern district of Mississippi. Sitting in equity.

The separate answer of Robert Bowman to a bill of complaint exhibited against himself in this honorable court by the president and directors of Canal Bank of Louisiana et als.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements and falsehoods in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to , answering, says: That from information derived from W. B. Partee he believes it to be true that said Sarah D. & Wm. B. Partee were indebted to said complainants on the 19th of November, 1866, upon contracts (being promissory notes) made before the late war, but respondent denies all knowledge of their indebtedness as evidenced by said promissory notes to said complainants, as charged in said bill to be due on the 1st days of January, 1868, 1869, 1870, 1871, and 1872, exhibited by exhibits to said bill, which he has recently seen.

Respondent, from his information and belief, says that the novation of said original notes, or contracts, as they are termed in said bill, was not consummate and complete on the 19th of November, 1866, and as this respondent is informed, advised, and believes, never was consummated.

Respondent admits the execution of said deed to him, but says that, as he was informed by said William B. and Sarah D. Partee, it was for all the creditors named therein, and not for complainants alone, and that said trust-deed embraced all their creditors except James Stewart, who had previous to that time obtained a judgment against said Sarah D. & Wm. B. Partee in the circuit court of Yazoo.

Respondent, further answering, says that as far as his knowledge & information extends the said complainants did not avail themselves of the terms

of said trust-deed, and denies that if they, or either of them, or any of the creditors embraced in said trust-deed, ever did so, that he never received notice thereof.

Respondent, further answering, says that some time in January, 1867, he had a conversation with Mr. Hyams, who purported to be the attorney of said complainants, the Canal & Crescent City Bank, as well as some other of said creditors in the city of New Orleans, who stated that he would advise his clients to accept said trust-deed. This respondent then stated to him, the said attorney, that said acceptance must be in writing, within ninety days from the date of said deed, according to its terms; otherwise, the deed would be invalid. Respondent further stated to said Hyams that if he acted as trustee, according to the terms thereof, that it would be necessary to furnish money for the payment of taxes on said lands in said deed mentioned as *as* part payment of said original notes. Respondent says that he then supposed and understood from said conversation that said attorney would inform him of the acceptance of his clients, if they agreed to accept said deed, but he failed to do so, failed to furnish the money for the payment of said taxes, and never wrote to him in regard thereto, or sent any acceptance thereof. Respondent says with this exception none of said creditors ever communicated with him on the subject of said deed except in the year 1867, by said attorney, as will be hereafter stated.

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Respondent, further answering, says that a few days after he left for his home in Yazoo City, and heard nothing more about the intention of said parties to accept said deed.

Respondent, further answering, says that on or about the 20th of April, 1867, the said Crescent City Bank and the said Canal Banking Company brought their suits in the circuit court of Yazoo County, Mississippi, for the recovery of the amount of the original notes, as respondent is informed and believes, due by said Sarah D. & Wm. B. Partee at the date of said trust-deed, and recovered judgments thereon, as will more fully appear by reference to certified copies of the proceedings in and judgments on said suits herewith filed, marked "Exhibits 1 & 2," respectively.

Respondent, further answering, says that before, & perhaps afterwards, a number of other of said creditors embraced in said trust brought their suits upon the original claims intended to be commuted or paid by the new notes of said Sarah D. & W. B. Partee, as provided therein. This respondent says that by reason of said suits, by the failure of said creditors or said W. B. & Sarah D. Partee to give him any notice of their acceptance of said deed, and by their failure to call upon him in any manner to act, that, as he is advised, said trust failed, & this respondent was released from the performance thereof. Respondent is therefore advised and so says that the limitation of ninety days for the acceptance of said terms of said deed was valid in law, and not against public policy as charged, and that said deed is a nullity. Respondent admits that he wrote said trust-deed, but denies that he had anything to do with the settlement of said original notes, or that he done or performed any labor in that respect except the writing of said deed. Admits that the firm of Wilkinson & Bowman wrote a letter to the effect and tenor as mentioned in said bill, addressed to said attorneys in New Orleans mentioned, but as no copy of said letter

was retained can neither admit nor deny that Exhibit B to said bill is a correct copy.

Respondent, further answering, says that it is true as stated in said bill that this respondent and his late partner, George B. Wilkinson, now deceased, did believe that said security at that time would be amply sufficient to pay said novated notes, and the said James Stewart, who held said judgment, was willing, if said Sarah D. & W. B. Partee would pay him in a short time, make a deduction from his judgment and settle on liberal terms. The said Partee had then promised to pay said judgment about the 1st of January, 1867. Respondent knows nothing of said proposition of Mrs. Sarah D. Partee as charged in said bill as marked "Exhibit C."

This respondent, further answering, says that he never saw or heard of said receipt, marked "Exhibit D" to said bill, until the commencement of this suit.

Respondent, further answering, says that of said creditors named in said receipt who had accepted the terms of said trust-deed by surrendering the old indebtedness, and received in novation the new notes of
63 said Sarah D. & W. B. Partee, the said Crescent City Bank, Wm. Silliman, C. C. Peck, Richard A. Bartley, and as respondent now remembers, some others named in said receipt, had brought suit on said original indebtedness alleged to have been novated at the date of said alleged receipt in the circuit court of Yazoo County upon said indebtedness, and either before or afterwards had obtained judgment upon the same, which said judgments are still in force and unreversed. Admits the suit and judgment by Jas. Stuart, and that Wilkinson & Bowman were his attorneys. Admits the release of errors by Sarah D. & Wm. B. Partee as charged, but denies that it was pretended. Admits the prosecution of said writ of error by said Sarah D. & W. B. Partee. Denies and denounces as wholly untrue that said Sarah D. & W. B. Partee and this respondent fraudulently procured said writ to be dismissed fraudulently to hinder, delay, and defraud creditors, and says that this charge as to respondent is maliciously false. Respondent, on the contrary, says that said writ of error was sued out without the knowledge of respondent at the time by J. C. Prewitt, the attorney of said Sarah D. & Wm. B. Partee. This respondent says on the contrary that the proceedings upon said writ of error in the high court of errors and appeals shows that said Stuart, by his attorneys, Wilkinson & Bowman, pleaded said release of errors to said writ, and upon said plea the judgment of said circuit court was, on the 9th day of November, 1868, duly affirmed by said high court of errors and appeals. Respondent does not know, as he is not advised, what motive or reason prompted said S. D. and W. B. Partee to sue out said writ, but supposes it was for delay. Respondent is advised and believes that the service of process in said case of Stuart vs. Partee & wife and said judgment and release of errors are good and valid in law, but even if they had been defective, respondent is advised that the said Sarah D. & W. B. Partee and said complainants are estopped by said judgment of said high court of errors and appeals, as the said court had full jurisdiction of said case, and said judgment decided that there was no error in said judgment of the court below. Admits the issuance of the writ of fieri facias on said judgment, the levy on said lands by the deputy sheriff of said county.

Respondent, further answering, says that said writ was issued at the instance of said James Stuart, the plaintiff in said judgment, and under his directions was ordered either by respondent or his partner, George B. Wilkinson. Denies that this respondent sued out said writ of venditioni exponas, but says that the same was sued out by said James Stuart, and this respondent or his partner were acting only as his attorneys. Admits the levy of said venditioni exponas, the sale of said lands, and the return of said sheriff by his deputy, John T. Heth. Respondent is advised, and so says, that said writ of venditioni exponas was not improvidently issued, and that the sale thereunder did pass the title to said purchaser. Respondent, from his information and belief, denies that said John T. Heth was not deputy sheriff of said county; that for some time before said writs were issued and for a considerable period afterwards he was acting as deputy sheriff, recognized by S. M. Dyer, the sheriff, as his deputy, and respondent during that period never before heard his official character called in question by any one.

Respondent, further answering, says that he admits the sale of said lands and the deeds therefor by said Dyer, sheriff, to said Stuart and said Partee as set forth in said bill. This respondent says that he is advised
64 that even if said writ does not show to whom said lands were sold, it does not vitiate said sale. This respondent says that as to so much of said bill as charges this court as to what is the law on the writ of venditioni exponas, that it is not a statement or allegation of law and not of fact, and is advised that the same is improperly incorporated in said bill. Denies that there was a long, unreasonable, and unexplainable delay between the issuance of said writ and venditioni exponas.

Respondent, further answering, says that the reason of said delay was that a short time previous to the 24th of April, 1867, the said W. B. Partee applied for an extension of time to pay said judgment. This proposition was submitted to Mr. Stuart or his agent by Wilkinson & Bowman, who agreed to extend the same until the 1st of January, 1868, provided his legal rights were in no manner jeopardized. Under the then existing laws, delays could be obtained with great facility by reason of the right to a writ of error & supercedeas by giving bonds only for cost & by injunctions without bond, and moreover there was at that time some doubt as to the legal liability of Mrs. Partee on said note, but her liability has been since fixed by the judgment of the supreme court of this State in Silliman vs. Partee, 44 Miss. Reports, being the judgment of the court on the original indebtedness of said Silliman alleged in Exhibit D to have been novated. In view further of the probable delays then in decisions of the supreme court, it was thought by said Stuart and his attorneys advisable to give said Partees time to pay said judgment until the 1st of January, 1868. And so it was agreed that said writ of fieri facias should not be enforced or executed until the first of January, 1868, conditioned that if the rights of said Stuart should be imperiled by any subsequent judgment creditor, then that said agreement should be null. In consequence of this extension said W. B. & Sarah D. Partee, as a security against other proceedings, gave, at the instance of the attorneys of said Stuart, said release of errors in said bill mentioned. The said Partee did not keep his promise by paying said judgment, but failed to do so, and thereupon the sheriff was ordered to proceed to execute said writ of fieri

facias, and was proceeding to do so when, on the 18th of Feb'y, 1868, the said Partees sued out their writ of error to the high court of errors and appeals, and said judgment, on the 9th of November, 1868, was affirmed. Denies that Jas. D. Partee was not present at said sale. Admits that James Stuart was not present, but was represented by Edward Drenning, his agent, and this respondent as one of the firm of Wilkinson & Bowman. Denies that no part of the purchase-money was paid, but, on the contrary, says that $550.00 was paid by Jas. D. Partee to said sheriff, and by said sheriff paid to Wilkinson & Bowman after deducting $93.00 for costs. Admits that as attorney for said Stuart, with the concurrence of Edward Drenning, the agent of said Stuart directed said sale. Denies and denounces as wholly untrue and false that said sale was made upon an agreement with this respondent and W. B. & S. D. Partee, or either of them, as falsely charged in said bill. Denies as utterly and wholly untrue that the said Partees agreed or ever did pay the fees owing by said Stuart to respondent or his law firm. Denies that said Partee afterwards paid any amount on said judgment, or paid any fees or other sums of money to respondent. Denies that there was any agreement between said parties, or either of them, as to said sale. Denies that said sale was made to secure the possession of said property in the family of said Partee, or under any agreement to that effect, but bona fide to collect Stuart's judgment. Respondent says that this charge is a sheer fabri-
65 cation, unfounded in fact or truth, and is but the invention of said complainants or the draftsman of said bill. This respondent says that if said W. B. & Sarah D. Partee had the personalty charged in said bill liable to execution, this respondent denies any knowledge thereof. Respondent says at the time that said writ was in his possession that the sheriff or his deputy informed respondent that said personalty was claimed by James D. Partee. Respondent had been informed that said lands were cultivated by said James D. Partee, and that he claimed said personalty as his own property, and therefore respondent denies as utterly false that said personalty was by order and direction of respondent not sold. Denies as wholly false and untrue that this respondent was the attorney of Jas. Stuart & W. B., S. D. & J. D. Partee in the matter of said sale, and as to the other matters as charged in said bill, and he denounces this charge as malicious and unfounded in fact or truth. This respondent says that in said sale he acted alone as the attorney of said Stuart; that he looked alone to his interest; that he procured the judgment creditor second in seniority to Stuart to attend said sale that Stuart's money might be realized; that J. C. Prewitt was the attorney of said Partees in said writ of error and in all subsequent proceedings in regard to said judgment and sale. Respondent says that in some other cases wholly disconnected with this of Stuart, and not in conflict with it, his late firm did act as the attorney of said Partee.

This respondent, further answering, says that if said complainants relied upon him to protect their interest, their conduct and actions were, to say the least, very strange; they did not advise him that they had taken said new notes provided in said trust-deed, but, on the contrary, many of them placed the old notes in the hands of other attorneys at the place of respondent's residence for suit and did sue; said complainants never called upon respondent to act, or in any manner, except as before stated, communi-

cated with him about the said trust, and, therefore, from all the facts, respondent denies that they relied upon him as charged in said bill. Admits, as before stated, that respondent did think at the time said deed was executed said security was good; admits that he did not give notice directly to said complainants because he did not feel it incumbent on him to do so. Respondent further says that at the time said trust-deed was executed that he was willing to accept said trust, and would have done so and carried it out in good faith, but the action and conduct of said complainants and the other creditors induced him to believe that they had abandoned it. Respondent further says that if said deed had been accepted and acted upon by said creditors, and any conflict arose between the interest of said Stuart and said creditors, he would have promptly resigned the said trust.

Respondent denies and denounces as maliciously false and unfounded the charge that his conduct in the premises was a fraud upon complainants' rights, or was intended to hinder, delay, and defraud creditors. This respondent says that said complainants, the Citizens' and Canal Bank', had, at the time of said sale in Yazoo City, able, faithful, and competent attorneys to whom their rights had been intrusted and who had full knowledge of said sale.

Respondent denies that the claim of said Stuart was included in said trust-deed, but, on the contrary, says that he expressly refused to accept said security.

Respondent denies that lands at the time of said sale would bring nothing at forced sales, but says that by reason of the disastrous seasons to crops, and the low price of money, that lands were low. Denies that
66 said sale was to hinder and delay creditors, but was bona fide, that Stuart might get his money.

This respondent, further answering, says that about the time mentioned, to wit, on the 8th of March, 1869, that he, or the firm of Wilkinson & Bowman, did receive a letter, not from complainants directly, but from Messrs. Hyams & Jonas, of New Orleans, purporting to act as the attorneys of some Partee's creditors and the said complainants or a part of them as now remembered, in regard to said trust-deed. Respondent denies that in the reply he claimed said deed to be void on a mere technical pretense, but on the ground that he never received notice of the acceptance of said trust-deed, and that the parties had sued on their original indebtedness. Respondent denies that at the time of said sale that he knew or had any notice of the acceptance of said complainants of said trust-deed, or that they had given said new notes. Denies that said complainants had given notice, either by words, letter, or their conduct, that they were confiding in him as a trustee. Denies that said Partee had anything to do with the sale of said property as far as he knows or believes. Denies that said property was worth forty thousand dollars on the day of said sale.

Respondent says that he did consider said property conveyed in said trust-deed at the time made as ample security for said intended novated notes, because the personal property and the probable accruing crops, together with the lands, were then, as he deemed, sufficient, with the time said notes had to run; but for the disastrous seasons of 1866 & 1867 the said Partee could have paid off a portion thereof with the proceeds of the crops. Denies as maliciously false and untrue that said sale was made by

previous agreement of parties, and that said sum of five thousand seven hundred and fifty dollars should be bid as charged in said bill, and says that this charge is the unfounded invention of the imagination of complainants or the draftsman of said bill. Denies again that said sale was to hinder, delay, or defraud creditors. Denies that no money was not paid on the day of sale.

Respondent says that on said lands bid in by James D. Partee there was a decree, principal and interest, of over eight thousand dollars in favor of Edward Drenning, administrator of Christopher Todd, deceased, which had or was entitled to priority of satisfaction over the judgment of Stuart, and, moreover, it was understood at said sale that W. B. Partee claimed his homestead in said lands, amounting to 240 acres, bought by James D. Partee.

Respondent further states that there was a large number of persons present at said sale, including Richard Barkley, the second judgment creditor of W. B. & Sarah D. Partee, who informed respondent that he came prepared to bid on said lands to their then market value, to save his judgment. There was also present N. G. Nye, one of the attorneys of Wm. Silliman and C. C. Peck. In said Exhibit D to complainants' bill it is set up that Silliman, Peck, & Barkley had accepted the said trust-deed, yet all of them had sued on said original indebtedness intended to be novated by said trust-deed.

Respondent says that, after said sale, the said W. B. & Sarah D. Partee refused to give up the lands bought by said Stuart, and, by advice of respondent, an action of ejectment was brought therefor by advice of this respondent, and to said suit there was, or notice was given that there would be, a plea setting up homestead in said lands, when said Partee &
67 wife were enjoined therefrom, and by a decree of the chancery court said injunction was perpetuated, and said lands decreed to be the property of said Stuart without right of homestead.

Respondent says that said sale to Stuart was made on a regular sale day, after due notice; that several other sales were made by said sheriff on the same day. Admits that said Partee is connected by affinity with respondent, but that he and said Partee are not on intimate terms.

Respondent says that said Partee withholds as aforesaid 240 acres of said land from Stuart against his consent, claiming the same as a homestead; that James D. Partee, as he is informed, claims to be in possession of the place bought by him; James Stuart is in possession of all lands bought by him except said 240 acres. Respondent, of his own knowledge, knows nothing of said deeds to F. Barksdale, trustee, from Jas. D. Partee; knows that said Barksdale sold said lands to Nelson, Lamphier & Co., and was informed by S. O. Nelson, of said firm, that the sale was made to satisfy an indebtedness due by J. D. Partee to his firm.

To interrogatory 1st. There was present at said sale Richard Barkley, N. G. Nye, the attorney of Silliman & Peck, Jas. D. Partee, W. B. Partee, Edward Drenning, the agent of Jas. Stuart, myself, and a large number of others, the only one of whom I can recollect was W. W. Wilde, and recollect him because of being examined as a witness in the chancery suit of Jas. Stuart vs. W. D. Partee, to recover possession of said lands. The lands bought by Jas. D. Partee were bid in by him in person; those bought by Stuart, either by Mr. Drenning or myself. The lands were

not adjudicated to Stuart, but sold to him for $5,200.00, because he was the highest bidder; those to Jas. D. Partee because he was the highest bidder. The only preliminary arrangements touching said sale were the notice of the sheriff, as far as I know. No negotiations were made between myself or my firm, as attorneys for Stuart & Partee, of any kind touching said sale. I cannot state the relative value of said lands bought by Stuart and Partee respectively with accuracy. Barkley, the second judgment creditor, informed me that he had come prepared to bid on said lands so as to realize his judgment, but was advised by N. G. Nye that $550 with the homestead of 240 acres *carved* and the priority of said decree of said Drenning, administrator, was the full cash market value of said lands. Barkley & Nye run up the other tract on Stuart to $5,200.00. But for instructions of Mr. Stuart, through Mr. Drenning, that Stuart did not desire to incumber himself with debt in the purchase of said lands bought by James D. Partee, I should have bid more on them, as said lands were much more valuable than those bought by Stuart. There was $550.00 paid by Jas. D. Partee, as I recollect now, to the deputy sheriff, and by him to me, or possibly it may have been to me directly.

2d interrogatory has already been answered.

3d. I did not regard, for reasons before stated, myself as trustee. I did not know, and was never informed by any one, that complainants would pay Stuart's judgment before selling the lands, as it would have been very readily accepted; Mr. Stuart being anxious to realize his money, and would have been glad to receive it and transfer the judgment.

4th. A part of my fee was paid from the proceeds of the sale of said lands, amounting to $457; a portion has since been paid by Stuart, and there is yet a part due, to be paid on the termination of the suit now pending between Stuart & Partee for possession of said lands.

5th. I did not retain copies of my letters to Stuart; very few were written, as our communication was with Mr. Drenning, his agent.

68 Mr. Stuart is now in Europe, and I cannot get access to the originals until his return.

6. Int. Already answered.

Having fully answered, respondent prays to be hence dismissed with his costs.

R. BOWMAN.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, Geo. T. Swann, clerk of the circuit court of the United States in and for the district aforesaid, personally appeared Robert Bowman, who, on oath, says that the facts set forth in the foregoing answer as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

ROB'T BOWMAN.

Sworn to and subscribed before me April 30th, 1873.

GEO. T. SWANN, *Cl'k.*

(Endorsed:) Filed Ap'l 30th, 1873. Geo. T. Swann, cl'k.

Exhibit 1 *to answer of Rob't Bowman.*

STATE OF MISSISSIPPI,
Yazoo County:

Be it remembered that heretofore, to wit, at the May term, 1868, of the Yazoo circuit court, begun and held at the court-house in Yazoo City, in and for the county aforesaid, on the 11th day of June, 1868, it being a regular term of said court, the following pleadings and proceedings were had and done before J. A. P. Campbell, judge of the fifth judicial district of said State:

Declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court, May term, 1867.

THE CRESCENT CITY BANK OF NEW ORLEANS, State of Louisiana, plaintiff,
against
WILLIAM B. PARTEE & SARAH D. PARTEE, defendants.

Said plaintiff declares that said defendants are justly indebted to said plaintiff in the sum of four thousand dollars, as evidenced by the promissory note in writing signed by said Sarah D. Partee, and authorized by said William B. Partee, dated New Orleans, February 4th, 1861, & *and* & payable on the 20th day of March, 1862, to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, with eight per cent. interest after maturity until paid.

Said plaintiff declares that said promissory note was by said firm of S. O. Nelson & Co. (who are non-residents of this State & not here sued) endorsed and delivered to said plaintiff, & demand and notice & protest of same were by said firm waived.

69 Said plaintiff avers that the full amount of said note is now due & unpaid, & that said defendants fail and refused to pay the same, and therefore this suit is brought.

MILES & EPPERSON,
Att'ys for Pl'ff.

A.

Copy of note.

$4,000.00.] NEW ORLEANS, *February* 4, 1861.

On the 20th March, 1862, I promise to pay to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, four thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

SARAH D. PARTEE.

Authorized by me.

W. D. PARTEE.

(Endorsement on note:) S. O. Nelson & Co.

We hereby waive protest, demand, and notice of protest.

S. O. NELSON & CO.,
Pp. J. S. LAMPHIER.

Demurrer.

W. B. PARTEE ET AL., DEF'TS,
ats.
CRESCENT BANK OF NEW ORLEANS, PL'FF.

And the said defendants, by their attornies, come and defend the wrong and injury, when, &c., and say that the said declaration and the matters and things therein contained, in manner and form as the same set forth and stated, are insufficient in law for said plaintiff to have or maintain his aforesaid action thereof against them, and they doth demur thereto, and for causes of demurrer, showeth:

1st. That said declaration does not contain any averment to charge these defendants with the amount of indebtedness alleged in said declaration, and does not show any cause of action against them, or either of them.

2d. That said declaration does not aver that said promissory note mentioned was ever delivered to the assignor of plaintiff, or that these defendants, or either of them, ever undertook and promised to pay the same.

3d. That said declaration contains only an averment of the evidence of defendants' indebtedness, and not any averment to fix or show the liability of said defendants therefor.

4th. Said declaration simply avers an indebtedness by defendants of four thousand dollars, evidenced *evidenced* by a promissory note in writing, signed by Sarah D. Partee and authorized by said William B. Partee, without stating the right by which William B. Partee authorized said signature or for whose benefit, *or whose benefit*, or any manner show who the princip*le* and responsible party was, nor does it show liability on the part of either of said defendants.

5th. Said declaration does not aver that said promissory note was
70 made or delivered by said defendants, or either of them, to S. O. Nelson & Co., but simply avers that it was signed by said defendant Sarah D. Partee, and authorized by defendant W. B. Partee.

6th. Said declaration does not aver any time or date at which said promissory note was signed or made.

7th. That said declaration is in many other respects informal, uncertain, and insufficient. Wherefore, by reason of the insufficieney of said declaration, said defendants pray judgment, &c.

WILKINSON & BOWMAN,
Att's for Defendants.

And said defendants, by their attorneys, come and defend the wrong and injury, when, &c., and say that they do not undertake & promise in manner and form as said plaintiff hath thereof complained against them.

WILKINSON & BOWMAN.

(Endorsement on declaration:) Crescent City Bank vs. W. B. Partee,

Sarah D. Partee. Dec. $5,991.98. June 11th, 1868. Yazoo circuit court, May term, 1867. Filed April 20, 1867. Geo. A. Gibbs, cl'k. Miles & Epperson.

Amended declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court.

THE CRESCENT CITY BANK OF NEW ORLEANS, State of Louisiana, plaintiff,
against
WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife, defendants.

Said plaintiff alleges that the said Sarah D. Partee, wife of the said Wm. B. Partee, by authority of law and the authority of the said husband, at New Orleans, in the State of Louisiana, on the 4th day of February, 1861, executed and delivered to S. O. Nelson & Co., merchants and partners under such firm-name, then doing business in said city of New Orleans, her certain promissory note of the date aforesaid, whereby she undertook and promised to pay to the order of said S. O. Nelson & Co., on the 20th day of March, 1862, at their counting-house in said city of New Orleans, the sum of four thousand dollars for value received, bearing interest at the rate of 8 per cent. per annum after maturity until paid, which said note is herewith filed as part hereof, marked "A." Said plaintiff declares that said note was executed and delivered by the said Sarah D. Partee, with the sanction and by the authority of her said husband and of the law, she being, at the time of its execution and delivery as aforesaid, the owner in her own right of plantations, lands, tenements, slaves, plantation implements, and stock, situated and lying and being in said State of Mississippi, for money & means for the supply of her plantations situated as aforesaid, & for the maintenance, clothing, care, and support of her slaves, property, and interest & business, and for the purchase of property and effects in her own name and for the use and benefit of her own separate estate.

Said plaintiff alleges that said firm of S. O. Nelson & Co. endorsed
71 and delivered said note to said plaintiff, and that said plaintiff is the legal owner and holder of the same, and that it is now and has long since been due, but that said defendants, although often requested to pay the same, have wholly failed and refused to do so. Said plaintiff alledges that said defendants, on the 20th day of March, 1862, at, to wit, the county & State aforesaid, were indebted to said plaintiff in the further sum of $4,000.00, for money loaned and advanced, and in the like further sum for so much money had and received; and also in the like further sum of so much laid out and expended; and also in the like further sum for goods, wares, and merchandise sold and delivered; and also in the like further sum upon an open account stated, & which several said sums said defendants promised to pay whensoever thereunto afterwards requested so to do. Yet to pay the same or any part thereof, although often requested to do so, they have wholly failed and refused, and still fail and refuse, to the

damage of said plaintiff eight thousand dollars, and therefore said plaintiff brings this suit.

MILES & EPPERSON,
For Pl'ff.

Summons.

The State of Missi-sippi to the sheriff of Yazoo Co., greeting:

You are hereby commanded to summon William B. Partee and Sarah D. Partee, if to be found in your county, so that they appear before the circuit cout, to be held at the court-house in Yazoo Co'ty in and for the county aforesaid, on the 4th Monday of May next, to answer a complaint filed in our said court by the Crescent City Bank of New Orleans, and have then and there this writ.

Issued the 20th day of April, 1867.

GEO. A. GIBBS, *Clerk.*

Endorsement.

This action is founded on a promissory note drawn by defendant Sarah D. Partee for $4,000.00, dated Feb'y 4th, 1861, payably M'c'h 20th, 1862. The sum actually demanded is the amount of said note with interest thereon until paid.

Judgment will be required at the return of this writ.

Complaint filed when writ issued.

MILES & E., *Attorney.*

[SEAL.] GEO. A. GIBBS, *Clerk.*

Executed May 22d, 1867, by delivering a true copy of the within writ to each of the within-named defendants.

S. M. DYER, *Sh'ff.*
By CHAS. C. DYER, *D. S.*

Circuit court Yazoo County. May term, 1868.

JUNE 11, 1868.

On said the following judgment was rendered:

THE CRESCENT CITY BANK OF NEW ORLEANS, State of Louisiana, *vs.* WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife.	I. 2207.

This day came the parties, by attorney, and issue being joined, it is ordered by the court that a jury come.

72 Whereupon came James Pepper and eleven others, who being duly elected, tried, and sworn to try the issue joined, upon their oath do say: We, the jury, find for the plaintiff, and assess their damage to the sum of $5,991.98 (five thousand nine hundred and ninety-one and $\frac{98}{100}$ dollars).

Whereupon it is considered by the court that plaintiffs have and re-

cover of defendants, William B. Partee, and Sarah D. Partee, his wife, the sum so assessed by the jury, and also their costs in this behalf expended.

J. A. P. CAMPBELL, *Judge*.

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Foote, clerk of the circuit court in & for said county, do hereby certify that the above and foregoing pages are a true and correct transcript of the record in the above-stated case (& also the judgment) as the same appears of record in my office.

Given under my hand and seal of office this 25th day of April, 1873.

[SEAL.] W. H. FOOTE, *Clk*,
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed 30 Ap'l, 1873. Geo. T. Swann, cl'k.

Exhibit 2 to answer of R. Bowman.

STATE OF MISSISSIPPI:
Yazoo County:

Be it remembered that heretofore, to wit, at the May term, 1868, of the Yazoo circuit court, begun and held at the court-house in Yazoo City, in and for the county and State aforesaid, on the 11th day of June, 1868, it being a regular term of said court, the following pleadings, and proceedings were had and done before J. A. P. Campbell, judge of the fifth judicial district of said State:

Declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court. May term, 1867.

THE NEW ORLEANS CANAL & BANKING COMPANY of New Orleans, Louisiana, plaintiff,
against
WILLIAM B. PARTEE AND SARAH D. PARTEE, defendants.

Said plaintiff declares that said defendants are justly indebted to said plaintiffs in the sum of five thousand dollars, evidenced by the promissory note of Sarah D. Partee, authorized by said William B. Partee, her husband, for said sum of five thousand dollars, dated January 5th, 1861, and due and payable on the 27th day of January, 1862, to the order of Rotchford, Brown & Co., at their counting-house in said city of New Orleans, with eight per cent. interest thereon after maturity until paid.

Said plaintiff declares that said above-described promissory note was by said firm of Rotchford, Brown & Co. (who are non-residents and not here sued) endorsed and delivered to said plaintiff, and demand of payment and protest, and notice thereof, waived.

73 Said plaintiff alledges that the full amount of said promissory note is due and unpaid, and that said defendants refused to pay the same, and therefore said plaintiff brings this suit.

MILES & EPPERSON,
Pl'ff's Atto'y.

Filed April 20, 1867.

GEO. A. GIBBS, *Clk.*

A copy of note.

$5,000.] NEW ORLEANS, *January* 5, 1861.

On the twenty-seventh January, 1862, after date, I promise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, five thousand doll's, value received, with eight p. cent. per annum interest after maturity until paid.

SARAH D. PARTEE.

No. 3123. Authorized by me.

W. B. PARTEE.

(On the margin:) Rotchford, Brown & Co.

(Endorsement on note:) Rotchford, Brown & Co.

We waive demand & protest of this note and service of notice on us as endorsers, and hold ourselves bound for the payment thereof in the same manner as if it had been regularly protested & notice served on us.

New Orleans, 18th November, '61.

ROTCHFORD, BROWN & CO.,
P. pro. A. J. AIKIN.

Summons.

The State of Mississippi to the sheriff of Yazoo Co., greeting:

You are hereby commanded to summon William B. Partee & Sarah D. Partee, if to be found in your county, so that they appear before the circuit court to be held at the court-house in Yazoo City, in and for the county aforesaid, on the 4th Monday of May next, to answer a complaint filed in our said court, by the New Orleans & Banking Company, and have then and there this writ.

Given under my hand and seal of office of said court this 20' day of April, 1867.

[SEAL.] GEO. A. GIBBS, *Clerk.*

Endorsement.

This action is founded on a promissory note for $5,000, dated January 5th, 1861, payable 27th , 1862, with interest at 8 per cent. from maturity. The sum actually demanded is the amount of said note with interest thereon until paid. Judgment will be required at the return of this writ.

Complaint filed when writ issued.

M. & E., *Attorney'.*

GEO. A. GIBBS, *Clerk.*

Executed May 22, 1867, by delivering a true copy of the within writ to each of the within-named defendants.

S. M. DYER, *Sh'ff*,
By CHAS. C. DYER, *D. S.*

74 *Demurrer.*

W. B. PARTEE & WIFE, DEF'TS,
ats.
NEW ORLEANS CANAL & BANKING COMPANY, of New Orleans, Louisiana, pl'ffs.

And the said defendants by their attorneys say that the matters and things in manner and form as set forth in said plaintiff's declaration are insufficient in law to have or maintain the aforesaid action thereof against these defendants, and the said defendants show to the court the following causes of demurrer, that is to say:

First. Said declaration does not show any legal liability on the part of said defendants, or either of them, to pay said sum of money mentioned on said plaintiff's declaration.

2. Said declaration does not aver or sufficiently show that said defendants, or either of them, ever undertook or promised to pay said sum of money mentioned in said plaintiff's declaration.

3d. Said plaintiff does not aver that said promissory note mentioned in his said declaration was ever by said defendants, or either of them, delivered to the assignor of plaintiff.

4th. No judgment could be rendered on said declaration; plaintiff does not show that he has been damaged to any amount whatever.

5th. Said declaration avers no legal liability against the separate estate of Sarah D. Partee, one of the said defendants.

Said declaration is in other respects informal, uncertain, and insufficient, &c.

Wherefore said defendants pray judgment, &c.

WILKINSON & BOWMAN,
For Def'ts.

Amended declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court.

THE NEW ORLEANS CANAL & BANKING COMPANY, of New Orleans, Louisiana, plaintiff,
against
WILLIAM B. PARTEE & SARAH D. PARTEE, defend'ts.

Said plaintiff alledges that the said Sarah D. Partee, wife of the said Wm. B. Partee, by the authority of law and with the consent of her said husband, at New Orleans, in the State of Louisiana, on the 5th day of

January, 1861, executed and delivered to Rotchford, Brown & Co., merchants and partners under such firm name, then doing business in said city of New Orleans, her certain promissory note of the date aforesaid, whereby she undertook and promised to pay to the order of Rotchford, Brown & Co., on the 27th day of January, 1862, at their counting-house in the said city of New Orleans, the sum of five thousand dollars, for value received, bearing interest at the rate of 8 per cent. per annum after maturity until paid, which said note is herewith filed as part hereof, marked "A."

75 Said plaintiff alleges that said note was executed and delivered by said Sarah D. Partee with the sanction and by the authority of her said husband and of the law, she being at the time of its execution and delivery the owner in her own right of plantations, lands, tenements, slaves, plantation implements, and stock, situated, lying, and being in said State of Mississippi, for money & means for the supply of her plantations, situated as aforesaid, and for the maintenance, care, and support of her slaves, property, interest, and business, and for the purchase of property and effects in her own name and for the use and benefit of her own separate estate.

Said plaintiff alleges that said firm of Rotchford, Brown & Co. endorsed and delivered said note to them, said plaintiff, and that the said plaintiff is the legal owner & holder of the same, and that it is now and has long since been due, but that said defendant', although often requested to pay the same, have hitherto wholly failed to do so.

Said plaintiff alleges that said defendants, on the 27th day of January, 1862, at, to wit, the county and State aforesaid, was indebted to said plaintiff in the further sum of $5,000,00 for money loaned and advanced, and in the like further sum for so much money laid out and expended, and also in the like further sum upon an open account stated; and which said several sums said defendants promised to pay whenever thereunto afterwards requested; yet to pay the same, or any part thereof, although often requested so to do, they have wholly failed and refused, and still fail and refuse, to the damage of said plaintiff ten thousand dollars, & therefore this suit is brought.

MILES & EPPERSON,
For Plaintiff.

Circuit court Yazoo County. May term, 1868—June 11th, 1868.

On said day the following judgment was rendered:

NEW ORLEANS CANAL AND BANKING COMPANY *vs.* WILLIAM B. PARTEE & SARAH D. PARTEE. } I. 206.

This day came the parties by attorney, and issue being joined, it is ordered by the court that a jury come.

Whereupon came James Pepper and eleven others, who being duly elected, tried, and sworn to try the issue joined, upon their oath do say: We, the jury, find for the plaintiff, and assess their damages to the sum of $7,548,88 (seven thousand five hundred and forty-eight and $\frac{88}{100}$ dollars.)

Whereupon it is considered by the court that plaintiffs recover of Will-

iam B. Partee and Sarah D. Partee, his wife, the sum so assessed by the jury, and also their costs in this behalf expended.

J. A. P. CAMPBELL, *Judge.*

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Foote, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing pages are a true and correct transcript of the record in the above-stated cause (& also the judgment) as the same appears of record in my office.

Given under my hand and official seal this 23d day of April, 1873.

[SEAL.] W. H. FOOTE, *Clk,*
Per R. D. SMITH, *D. C.*

76 (Endorsed:) Filed 30th Ap'l, 1873. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 16th day of May, A. D. 1873, the following replication to answer of R. Bowman was filed in the clerk's office of said court, in the words & figures following, to wit:

Replication to answer of R. Bowman.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LA. & OTHERS
vs. } 185.
WILLIAM B. PARTEE ET ALS.

And the said complainants, for replication to the answer of Robert Bowman herein filed, say that the several matters and things stated in said answer are vague, uncertain, and , and present no sufficient answer in said cause, and that the several matters and things set forth in complainants' said bill are true in manner and form as therein and thereby set forth and alleged, as complainants stand ready to aver, maintain, and prove as to this honorable court may seem meet; wherefore, &c.

NUGENT & YERGER,
Sol. for Compl't.

(Endorsed:) Filed May 16, 1873. G. T. Swann, cl'k.

And afterwards, to wit, on the 8th day of July, A. D. 1873, an alias subpœna issued from the clerk's office of said court, which, with the return of the marshal thereon, is in words & figures following, to wit:

Alias subpœna.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, as before, without delay to summon William B. Partee, Sarah D. Partee, James D. Partee, Thomas A. Nelson,

James Stuart, and Fountain Barksdale, trustee for Nelson, Lamphier & Co., citizens of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court, on the first Monday in August next, to answer a bill in equity exhibited against them et als. by the president, directors, and company of the Canal Bank of Louisiana, the Crescent City Bank, the Union Bank, and the Louisiana State Bank, all of which are bodies corporate, domiciled and doing business in the city of New Orleans, Louisiana, and J. Marsh Denman and A. Bidault, who are citizens of the State of Louisiana, and who sue in behalf of themselves and all others claiming under the trust-deed in said bill mentioned, and unless shall enter their appearance therein in the clerk's office aforesaid on or before the time specified above the said bill will be taken for confessed, and have then there this writ and how you have executed the same.

Witness the honorable Nathan Clifford, Chief Justice of the Su-
77 preme Court of the United States, and the seal of our said circuit court, this 8th day of July, A. D. 1873, and in the 98th year of the Independence of the United States of America.

[SEAL.] GEO. T. SWANN, *Clerk.*

Received July 14th, 1873.

R. J. ALCORN,
U. S. Marshal,
Per WM. J. BROWN, JR.,
Dep. U. S. M.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF MISSISSIPPI,
Jackson, Miss., July 14th, 1873.

I hereby nominate and appoint J. W. Blessing my special deputy to execute and return the within process according to law.

R. J. ALCORN,
U. S. Marshal.

Executed on Fountain Barksdale in person, and delivered him a true copy of same this 21st day of July, A. D. 1873.

R. J. ALCORN, *U. S. M.,*
By BLESSING, *Dep'y.*

Executed in person on James D. Partee, this 23d day of July, A. D. 1873. The other defendants not found in this district.

R. J. ALCORN,
U. S. Marshal,
By J. W. BLESSING,
S. D. U. S. M.

And afterwards, to wit, on the 30th day of July, A. D. 1873, the answer of Fountain Barksdale was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Answer of F. Barksdale.

To the honorable the circuit judge of the United States for the southern district of Mississippi, in equity sitting:

The answer of Fountain Barksdale, of Yazoo County, Mississippi, to a bill of complaint exhibited against W. B. Partee, this respondent, and others by the Canal Bank of Louisiana and others in this honorable court.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto or so much thereof as he is advised is material for him to answer, answering, says: That he is informed and believes that his co-defendant, Thomas A. Nelson, is not a citizen or resident of Yazoo County, Mississippi, but resides at Memphis, in the State of Tennessee, and has been informed and believes that said defendants Jas. Stuart and Wm B. and Sarah D. Partee are now and were at the time of filing said bill of complaints non-residents of the State of Mississippi.

Respondent, further answering, says that of his own knowledge he knows nothing of the indebtedness due by said Wm. B. Partee and Sarah D. Partee to said complainants created before the late war, nor
78 of said trust-deed executed by them to R. Bowman as trustee, nor of the acceptance or non-acceptance of its terms by said parties, nor of the rights of said complainants thereunder, and if in any manner to be effected by the allegations of said bill in regard thereto, demands strict proof.

Respondent, further answering, says that he knows of his own knowledge nothing of the judgment of James Stuart against Wm. B. and Sarah D. Partee, nor of any of the proceedings thereunder or connected therewith, nor of the sale under said judgment and of the respective purchases of said lands by said James D. Partee and Jas. Stuart, or of any of the matters connected therewith as alleged in said bill, and if in any manner to be effected by these allegations, demands strict proof.

Respondent, further answering, says that he only knows that, for a period of several years after the date of sale to Jas. Stuart and up to the sale thereof by this respondent, that he was the reputed owner of said lands.

Respondent further answering, says that he admits the executions of the several trust-deeds in said bill mentioned by James D. Partee to this respondent for the benefit of Nelson, Lamphier & Co. at the dates and for the considerations respectively mentioned in said trust-deeds as alleged in said bill.

Respondent, further answering, says that pursuant to the terms and provisions of said trust-deeds in said bill mentioned, and at the request of Mr. S. O. Nelson, of the firm of Nelson, Lamphier & Co., the cestui que trusts, this respondent, after giving due and legal notice of the time and place of sale as prescribed in said deed, did, on the 10th of June, A. D. 1872, sell at public auction to the highest bidder for cash the said lands in said deed mentioned, in the manner provided by law, and at said sale said Thomas A. Nelson, then and now a citizen and resident of Memphis, Tennessee, became the purchaser of said lands for the sum of three thousand one hundred dollars, and this respondent did, in pursuance of said

purchase by said Thomas Nelson, execute to him a deed for said lands as alleged in said bill.

Respondent, further answering, says that he denies any knowledge of any other consideration for said trust-deeds than what are expressed therein. Denies all knowledge or information that said James D. Partee, after or before said sale by this respondent, should have the right to redeem or purchase said lands from Thomas A. Nelson. Denies all knowledge of any agreement between Jas. D. Partee and Nelson, Lamphier & Co. that said sale was not to operate as a complete sale and conveyance.

Respondent, further answering, says that said sale was fairly conducted by him, made after due notice, within the hours prescribed by law, and was struck off to said Nelson because he was the highest and best bidder. Respondent believes it to be true that said James D. Partee is on said lands, but in what capacity—whether as manager of said Nelson or not, he does not know. Respondent is informed that said William B. Partee and Sarah D. Partee have been since said sale living in Missouri. This respondent, except as herein in this his answer, knows nothing of the matters alleged in said bill.

Having fully answered, respondent prays to be hence dismissed with his costs, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
For Def't.

79 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, W. H. Mangum, a U. S. commissioner in and for the district aforesaid, personally appeared Fountain Barksdale, of Yazoo County in said district, who on oath says that the facts set forth in the forgoing answer as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

F. BARKSDALE.

Sworn to and subscribed before me, at Yazoo City, this 29th day of July, 1873.

[SEAL.] W. H. MANGUM,
Commissioner in the U. S. Court, South'n Dist. of Miss.

(Endorsed:) Filed July 30th, 1873. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 1st day of August, A. D. 1873, the answer of J. D. Partee was filed in the clerk's office of said court, which, with the exhibit thereto, is in the words & figures following, to wit:

Answer of J. D. Partee.

To the honorable the judge of the circuit court of the United States for the southern district of Mississippi, in equity sitting:

The answer of James D. Partee to a bill of complaint exhibited against W. B. Partee, this respondent and others, in this honorable court by the president, directors, and company of the Canal Bank of Louisiana, and others.

This respondent, saving and reserving to himself all manner of excep-

tions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says: That he admits that this respondent and his codefendants, F. Barksdale and R. Bowman, are residents and citizens of Yazoo County, Mississippi. Respondent denies that the other of said defendants are residents or citizens of said county and State.

Respondent says that Thomas A. Nelson was at the time and before the filing of said bill and is now a resident and citizen of the city of Memphis in the State of Tennessee. That William B. and Sarah D. Partee are now and were at the time of filing said bill, and before residents and citizens of St. Louis in the State of Missouri, and James Stuart was formerly a resident and citizen of New Orleans, in the State of Louisiana, but respondent is informed and believes, and so says, that now and at the time of filing said bill, & before said Jas. Stuart was a resident of Ireland in the kingdom of Great Britain.

Respondent, further answering, says that he knows nothing of the indebtedness of said William B. and Sarah D. Partee, upon said alleged contracts, on the 19th of November, A. D. 1866, as charged in said bill, except as appears by said exhibits to said bill—knows nothing of the execution of said trust-deed by William B. and Sarah D. Partee to said Robert Bowman, as trustee, except as appears by said bill and said trust-deed as an exhibit thereto. Respondent of his own knowledge knows nothing as to the person who wrote said deed, nor as to who performed the labor of settlement, except that he has been informed and believes that it was written by said Robert Bowman, and that the labor of attempting to effect a settlement thereunder was performed by William B. Partee. Re-
80 spondent knows nothing of said letter of Wilkinson & Bowman, marked "Exhibit B" to said bill, nor to said letter of Mrs. Sarah D. Partee, marked "Exhibit C," nor of said receipt marked "Exhibit D," except as appears by said exhibits.

Respondent, further answering, says that of his own knowledge he knows nothing of said suit of Jas. Stuart vs. W. B. and Sarah D. Partee, but has been informed and believes that there was such a suit and judgment thereon.

Respondent admits that a writ of error was prosecuted by said William B. Partee & wife from said judgment to the high court of errors and appeals. Respondent is informed and believes that said writ was not dismissed, but said judgment was affirmed by said court. Respondent, from his information and belief, denies that *in* the prosecution of said writ and the affirmance of said judgment was to hinder, delay, or defraud complainants or to defeat said trust-deed.

Respondent, further answering, says that he knows nothing of the return on said writ of summons in said suit of Stuart vs. W. B. and Sarah D. Partee, except as appears by exhibits to the bill, but is advised and believes, and so says, that said judgment having been affirmed by the high court of errors and appeals, cured any defect, if any existed, in the return on said writ. Respondent is informed and believes, and so says, that said release of errors made by said W. B. and Sarah D. Partee was pleaded by said Stuart, or his attorneys, in said high court, and that the same was affirmed. Respondent admits the issuance of said writ of fieri facias under said judgment and levy on said lands, and said writ of venditioni exponas, but by whom sued out respondent does not know. Respondent is informed,

and believes that before said writ of venditioni exponas was sued out, and said writ of fieri facias was returned, as alleged in said bill, into court, to wit, on the 18th of February, 1868, the said W. B. and Sarah D. Partee, prosecuted a writ of error from said judgment to the high court of errors & appeals, which was there affirmed, and after its affirmance that said writ of venditioni exponas was issued, under which said lands were sold. Respondent is advised and believes that said sale was valid under said writ of venditioni exponas. Denies that said sale passed to the purchasers no valid to said lands.

Respondent, further answering, says that at the time said writ of fieri facias was levied, and at the time of sale, that said Jno. T. Heth was acting as deputy sheriff, was recognized as such by S. M. Dyer, the sheriff of Yazoo County, and if in any manner to be effected by the allegation of complainants' bill that he was not deputy sheriff this respondent demands strict proof.

Respondent, further answering, says that the sale of said lands to this respondent and said Stuart was made by said sheriff of Yazoo County, Mississippi, on Monday, the 4th of January, 1869, and was not on the 5th of said month, and if the return on said writ of vendi. is as alleged, that said lands were sold on the 5th of January, and if the deed of said Stuart recites that it was on the 5th of said month this respondent says, as to that, said return and recital is, as he believes, an error.

This respondent, further answering, says that said sale was on the first Monday of January, 1869.

Respondent, further answering, says that immediately after sale under said writ of vendi. under said judgment of Stuart, that he applied for a deed to said lands—the said sheriff, S. M. Dyer, or his deputy, Jno. T. Heth, replied that they were then busy and unable to make out said
81 deed, but would do so in a short time and mail it to this respondent, which was done shortly afterwards. A certified copy of said deed is herewith filed as Exhibit No. 1. This respondent is advised and believes that the sale of said lands was valid. Denies that said sales were null and void.

This respondent, from information and belief, denies that said writs of fi. fa. & vendi. were issued without authority of law, or that the judgment under which they issued were void, or that said sale was not advertised according to law, or that the proceedings under which said sales were fraudulent or intended to hinder, delay, and defraud creditors of said W. B. & Sarah D. Partee, or that said sale was not made on a regular sale day, or that said sheriff failed to give legal notice of the time of said sale as required by law, & if to be effected by any of these allegations, demands strict proof.

This respondent denies that he was not present at said sale, but says that he attended said sale to buy a portion of said lands. This respondent says that he knows nothing of said Bowman conducting or managing said sale, except that he was present as the att'y of Stewart, but says that as far as he knows said sale was conducted by said Dyer, the sheriff of said county, and was fairly and legally carried on. Denies that said sale was consummated upon an agreement between this respondent, W. B. Partee, and R. Bowman, as charged in said bill. Denies that there was any agreement that a part of said lands should be bid in by said Stewart and

the residue by this respondent, as charged in said bill. Denies that he, either separately or with William B. Partee, ever agreed to pay the fees owing by said Stuart to Wilkinson & Bowman or said Bouman or any part thereof. Denies that he ever paid said Bouman the fees of said Stuart or any part or portion thereof, at any time, or that he ever agreed to do so, separately or with any one else. Denies that there ever was any arrangement, agreement, or understanding between this respondent, W. B. Partee and said R. Bowman, to keep said lands in possession of W. B. & Sarah D. Partee or the family. Admits that previous to said sale said W. B. & Sarah D. Partee were in possession of said lands with this respondent who cultivated the same. Denies that, at the time of the issuance of said execution on said judgment, or at the time that it was levied, or at any time after the rendition of said judgment, that W. B. and Sarah D. Partee had in their possession as their own property, any personalty subject to seizure and sale in said county or elsewhere. Denies that said W. B. and Sarah D. Partee had any mules, cattle, farming implements, household furniture, &c., subject to seizure & sale under said execution. Denies that said Robert Bowman was the attorney of said Wm. B. & Sarah D. Partee in the matter of said sale or in any of the proceedings in said Stuart judgment.

Respondent knows nothing of the reliance of said complainants in said R. Bowman as trustee as charged in said bill, and if to be effected thereby, demands strict proof. Respondent of his own knowledge knows nothing of said Stuart claim being embraced in said trust-deed, but is informed that it was not.

Respondent, further answering, says that he admits that lands at the time of said sale were selling low. Denies that lands at forced sales at that time would bring nothing. This respondent, at the time of said sale, says that he knew that said William B. and Sarah D. Partee had a good many creditors, and from this cause as well as others this respondent expected that there would be bidders at said sale. Respondent denies
82 that he is not a bona fide purchaser of said lands. Denies that he knew of any infirmities in the title which he required to said lands, and at that time this respondent understood from said W. B. Partee that said trust-deed had failed by reason of the non-acceptance of the creditors of the provisions thereof. Respondent denies that he never paid any money for said lands.

Respondent, further answering, says that he bought said lands in good faith for himself, believing that he was getting a good title. Respondent, at the time of the purchase of said lands, knew or had understood that there was an incumbrance of over eight thousand dollars, principal and interest, in favor of Edward Drenning, adm'r of Christopher Todd, deceased, which had priority of satisfaction out of said lands bought by respondent, to said Stuart judgment, and this fact was made known on the day of sale, and this respondent bought subject to said incumbrance. Respondent says that on the day of the sale of said lands he paid five hundred & fifty dollars, the amount of his bid, and for which said lands were struck off to him, subject to said incumbrance. Knows nothing of said correspondence between said complainants and R. Bowman, and if to be effected thereby, demands strict proof. Denies that William B. and Sarah D. Partee have been in possession of said lands since said sale. Admits

the execution of said trust-deeds to F. Barksdale as trustee, for benefit of Nelson, Lamphier & Co.

This respondent, further answering, says that said trust-deeds of 1869 & 1870 were executed for a balance of supplies furnished him the year previous, and for supplies advanced and to be advanced to this respondent for said years respectively. Denies that said deeds were made to secure antecedent debts of W. B. and Sarah D. Partee. Denies that said deeds were made at the instance of W. B. Partee, as charged in said bill. Denies that said deeds are for any other consideration than expressed upon the face of said deeds. Denies that said debts embraced or expressed in said deeds have been paid or were paid before the sale by F. Barksdale as trustee. Respondent says that at the time of said sale by said trustee there was over thirty thousand dollars due by him to said Nelson, Lamphier & Co., which were created by this respondent on his own account with them and no part of which was the debt of W. B. and Sarah D. Partee. Denies that there was any agreement or understanding before said sale, that this respondent should have the right to redeem said lands as charged in said bill, or that the same was not to operate as a complete sale. Denies that said W. B. & Sarah D. Partee and this respondent have been in possession of said lands since the late war, receiving the rents, issues, and profits thereof, as charged in said bill.

Respondent says that up to the time of said sale, Jan'y 4, 1869, by the sheriff of Yazoo County under said Stuart judgment, the said W. B. & Sarah D. Partee were in possession thereof with this respondent; since then up to time of said sale, this respondent was in possession, cultivating and receiving the profits, and since said sale by said F. Barksdale, this respondent has had possession of said lands for said T. A. Nelson, as his agent and manager, and has by his directions paid over the profits to Nelson, Lamphier & Co.

Respondent further says that the said T. A. Nelson is a bona fide purchaser of said lands, and if there were any defects in the title to said lands the said Nelson, as this respondent is informed and believes, had no knowledge thereof.

To the special interrogatories propounded to him, this respondent says to—

83 1st. That he was under no obligation to said complainants to give them notice of said sale, and this respondent, nor, as he is informed and believes, did William B. and Sarah D. Partee have any notice or knowledge of said sale under said venditioni until about one week previous to the time it occurred.

2d. The said lands bought by me at said sale were considered valuable, or good lands, but the fences were broken down and the houses in a dilapidated condition. The improvements on said lands had been devastated by both armies during the late war, and no other improvements had been put on them since the close of the war up to day of sale, except one cabin. I think said lands were worth about ten thousand dollars at public sale. There were lands enough for two plantations. The bid made by me was five hundred and fifty dollars; this was the last bid made on said lands. There had been previous bids made by other parties. The said lands were sold subject to said decree in favor of Drenning, administrator, as aforesaid. The said bill of $550 was paid on the day of sale, as I now remember, to

R. Bowman, as the attorney of Stuart. The money was first offered, as I now recollect, to the sheriff, or Jno. T. Heth, his deputy, who requested me to pay it over to Wilkinson & Bowman, the attorneys of said Stuart, of which firm R. Bowman was a member.

3d. I did not compromise the judgment of Stuart, and to the best of my knowledge, information, and belief it never has been compromised. Before said sale the said W. B. Partee made several efforts to compromise it, but failed on every attempt. I do not know why the release of errors was made, and don't know who made it.

4th. Knows nothing of his own knowledge.

5th. I never purchased said judgment at any time, and to the best of my knowledge, information, and belief said judgment was never purchased by said W. B. and Sarah D. Partee, or either of them, but is still held and owned by Jas. Stuart.

I was present when said lands were sold under said writ of venditioni exponas. They were sold on the 4th of January, 1869, by S. M. Dyer, sheriff of Yazoo County, Mississippi. There was the amount of my bid, $550.00, paid by me, as before stated.

Int. 7. The lands bought by me are in possession of T. A. Nelson by me as his agent and manager, aforesaid, and I am in possession of a portion of the other lands. After said sale the said W. B. and Sarah D. Partee remained a short time on said lands bought by Stuart, they claiming a homestead thereon, which was disputed by Stuart, and a law-suit ensued by reason of the claim of said homestead between them and said Stuart. About a year after said sale they left said lands, and have resided ever since in St. Louis, State of Missouri.

Int. 8. The said debt with Nelson, Lamphier & Co. was created for plantation supplies, money advanced to this respondent after the purchase by him of said lands, and balance furnished for this respondent and his deceased brother, William Partee, who were partners in the planting business up to the time of his death in the year 1868. Respondent does not believe any examination of records was made as to the title of said lands. This respondent had no attorney, nor does he believe that Nelson, Lamphier & Co. had, except that respondent is informed and believes that S. O. Nelson advised with Judge W. R. Yerger in regard to the form of the trust-deed.

84 Having fully answered, respondent prays to be hence dismissed with his reasonable costs, &c.

J. A. P. CAMPBELL.
R. BOWMAN,
For Def't.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, W. H. Mangum, a United States commissioner in and for the district aforesaid, personally appeared James D. Partee, defendant in the foregoing answer, who on oath says that the matters and things therein stated as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

JAS. D. PARTEE.

Sworn to and subscribed before me, at Yazoo City, this 30th day of July, 1873.

[SEAL.] W. H. MANGUM,
United States Commissioner for the Southern Dist. of Mississippi.

(Endorsed:) Filed with Exhibit 1 this August 1, 1873. Geo. T. Swann, cl'k.

Exhibit No. 1 to answer of J. D. Partee.

Wm. B. Partee et ux., p'r sheriff, to James D. Partee.

Know all men by these presents that whereas, on the 6th day of June, 1866, in the circuit court of Yazoo County, State of Mississippi, James Stewart recovered judgment for six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars ($6,894.86) against William B. Partee and Sarah D. Partee, his wife, on which judgment execution was issued from said court on the 1st day of January, 1867, which execution was directed to the sheriff of said county, commanding said sheriff that of the goods and chattels, lands and tenements of the said William B. Partee and Sarah D. Partee he cause to be made the aforesaid sum of money together with interest and costs. And whereas, on the 9th day of April, 1867, the said sheriff, by virtue of said execution, levied on the following lands as property of said defendants, to wit: Lots No. 3, 4, 5, 6, 7, & 8, and 28 acres in lot 1, sec. 5; all in sec. 6; NE. $\frac{1}{4}$ sec. 8; S. $\frac{1}{2}$ sec. 9; NE. $\frac{1}{4}$ and S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 10; the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ and E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 15; all sec. 16; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 23; W. $\frac{1}{2}$ sec. 24, township 9, range 4 west; N. $\frac{1}{2}$ sec. 1; NW. $\frac{1}{4}$ sec. 2; NE. $\frac{1}{4}$ sec. 3, township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36, township 10, range 5 west, and lying and being in Yazoo County, State of Mississippi, as property of said defendants. And whereas, on the 7th day of December, 1868, a writ of venditioni exponas was issued from the clerk's office of said court, directed to the sheriff of said county, commanding him to expose to sale the aforesaid lands to satisfy the aforesaid sum of money and all interest and costs, which said writ was duly received by said sheriff. And whereas I, Samuel M. Dyer, sheriff, of said county, by virtue of said writ, did, on the first Monday of January, 1869, that being the 4th day of said month, after giving due and legal notice of the time, place, and terms of sale, exposed the aforesaid lands to sale at public auction, before the court-house door in Yazoo City, to the highest bid-
85 der for cash, when and where James D. Partee became the purchaser of the following parcels of said lands, to wit: The south half of section nine, the NE. $\frac{1}{4}$ and S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ sec. 10; the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ and S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ sec. 15; E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ sec. 15; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 23; the W. $\frac{1}{2}$ sec. 24, all in township 9, range 4 west, for the sum of five hundred and fifty dollars (subject to an incumbrance), that being the highest and best bid made for said lands:

Now, therefore, and in consideration of the premises aforesaid and of the sum of five hundred and fifty dollars to me in hand paid by the said James D. Partee, the receipt of which is hereby acknowledged, I do by these presents grant, bargain, sell, and convey the aforesaid lands to said

James D. Partee, to have and to hold the same to him and his heirs and assigns forever, together with all the appurtenances thereunto belonging, as fully and completely as I am authorized and empowered to grant, bargain, sell, and convey by the proceedings aforesaid, and by law as sheriff as aforesaid.

Given under my hand and seal and dated this 4th day of January, A. D. 1869.

S. M. DYER, *Sheriff.* [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of said county, Sam'l M. Dyer, and acknowledged that he signed, sealed, and delivered the foregoing deed for the uses and purposes and on the day and year therein written as his act and deed.

Given under my hand and seal of said court January 14th, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clerk,*
By M. W. SMITH, *D. C.*

Filed & recorded Jan'y 14th, 1869. 82 stamps on deed.
M. A. JENKINS, *Clerk,*
M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, A. T. Morgan, clerk of the chancery court of said county, do hereby certify that the foregoing three pages contain a true and correct copy and transcript of the deed from Wm. B. Partee et ux., per sheriff, to James D. Partee, together with the certificates & proofs thereof as fully & completely as the same appears & remains of record in my office in book Y, on pages 388 & 389, of the records of deeds of Yazoo County.

Given under my hand and seal of office this 30th day of July, A. D. 1873.

[SEAL.] A. T. MORGAN, *Clk,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with answ'r Aug., '73. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 4th day of August, A. D. 1873, the following replications to the answers of Jas. D. Partee and F. Barksdale were filed in the clerk's office of said court, which are in the words & figures following, to wit:

86 *Replication to answer of J. D. Partee.*

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LA. ET ALS.
vs.
W. B. PARTEE ET ALS.

And the said complainants, as to the answer herein filed by James D.

Partee, says that the matters and things stated in the bill are true in manner and form as therein and thereby set forth and alleged, and that the statements, charges, &c., contained in said answer are untrue, and constitute no sufficient defence; all of which these repliants stand ready to maintain and prove as this court may direct.

NUGENT & YERGER,
Sol's for Complainants.

(Endorsed:) Filed Aug. 4, '73. Geo. T. Swann, cl'k.

Replication to answer of F. Barksdale.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LA. ET ALS. }
vs. } 185.
WILLIAM B. PARTEE ET ALS. }

And the said complainants, for replication to the answer of F. Barksdale herein filed, says that the matters and things stated in the original bill are true in manner and form as therein and thereby set forth and alleged, and that the statements and responses contained in said answer are untrue, &c.; and this these repliants stand ready to maintain and prove as this honorable court may direct. Wherefore, &c.

NUGENT & YERGER,
Sol's for Compl'ts.

(Endorsed:) Filed Aug. 4, '73. G. T. Swann, cl'k.

And afterwards, to wit, on the 10th day of November, A. D. 1873, the following affidavit of non-residence was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Affidavit of non-residence.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LOUISIANA ET ALS. }
vs. } 185.
W. B. PARTEE ET ALS. }

Personally appeared before me, clerk of said court, W. L. Nugent,
87 of counsel for complainants, who, being sworn, says that William B. Partee and Sarah D. Partee, his wife, defendants in the above cause, have removed themselves out of this State, and now reside and have their post-office address at St. Louis, in the State of Missouri; that Thomas A. Nelson, another defendant to said cause, resides in and has his post-office address at Memphis, in the State of Tennessee, and at New Orleans, in the State of Louisiana, and that James Stewart, another defendant herein, resides in, and has his post-office address in, the city of New Orleans, Louisiana, and that said defendants cannot be served with process herein.

W. L. NUGENT, *Sol'r, &c.*

Respondent, further answering, says that he believes it to be true that said trust-deed in said bill mentioned was executed by said Sarah D. and Wm. Partee, but this respondent further says that he is informed and believes, and so says, that neither of said complainants, nor any of the other creditors of said Sarah D. Partee, had at the time said deed was executed accepted said terms of settlement as provided in said deed, by the surrender of their original notes and the acceptance of the new or novated notes, and that said deed was only executed in contemplation or anticipation of a settlement being made on the basis thereof.

Respondent, further answering, says that he is informed and believes, and so says, that neither said complainants or any of them accepted the provisions of said trust-deed after its execution according to the terms thereof.

This respondent, further answering, says that he is informed and believes, and so says, that complainants did not surrender to said Sarah D. and William B. Partee the old or original notes in said trust-deed mentioned, but that said complainants, the Canal Bank (which is sometimes called the Canal Bank and sometimes the Canal & Banking Company) of New Orleans, after said pretended acceptance of said trust-deed, and after said pretended novation, brought suit on the original ante-bellum note in the circuit court of Yazoo County, Mississippi, and recovered judgment thereon, on the 11th day of June, 1868, for the the sum of seven thousand five hundred and forty-eight dollars and eighty cents, and the said complainant the Crescent City Bank also brought their suit in the circuit court of said county on the original note of Sarah D. Partee, approved by her husband, the said William B. Partee, being the note pretended in said bill to be compromised or novated, and recovered judgment thereon in said court on the 11th day of June, 1868.

This respondent, further answering, says that among the creditors of said Sarah D. Partee, named in said trust-deed, that R. A. Barkley, Wm. Silliman, S. B. Numan, esq., Wm. McLean, Jonathan Montgom', Seaman & Peck, and perhaps some others, after said pretended acceptance of said trust-deed, and after said pretended novation in said bill of complainants mentioned, brought suit in the circuit court of Yazoo County, Mississippi, on their original ante-bellum claims and recovered judgments respectively thereon; certified copies of the proceedings and judgments in said suits will be provided and read on the final hearing of this cause.

90 Respondent, further answering, says that in order to carry out the composition of the debts due by said Sarah D. Partee to the creditors named in said trust-deed according to the terms thereof, the novated or new notes of said Sarah D. Partee and W. D. Partee, as described in said bill, as this respondent is informed and believes, were left with the attorney of said complainants, the Citizens' and Canal Bank', and perhaps others of said complainants, for the purpose of consummating a settlement with all of said creditors upon the basis of terms provided in said deed, and that said original notes were not delivered in lieu of said novated notes to said Sarah D. & Wm. B. Partee or to either of them.

Respondent, further answering, says that by the terms of said trust-deed it is expressly provided that if any of the creditors of said Sarah D. Partee shall fail within ninety days from the date thereof to signify in writing their acceptance of the terms of settlement under said deed and payment

of their debts according to the provisions of the same, *and* any creditor failing to do so should be considered as refusing the same, and said creditors so failing to accept should be barred of all benefit thereof, as will more fully appear by refer*a*nce to the copy of said deed filed as an exhibit to complainants' bill.

Respondent, further answering, says that he is informed and believes, and so says, that said complainants, nor either of them, nor any of the creditors mentioned in said bill, ever signified in writing their acceptance of the terms of settlement under said deed, according to the provisions thereof, either to said trustee or Wm. B. & Sarah D. Partee, and he demands strict proof thereof.

Respondent, further answering, says that he is informed and believes, and so says, that said complainants did not, as charged in said bill, avail themselves of the provisions of said deed of trust, and if in any manner to be *e*ffected by this allegation, demands strict proof.

Respondent, further answering, says that he is informed and believes that notwithstanding said receipt, an alleged copy of which is marked "Exhibit D" to complainants' bill, yet said original notes named therein were not surrendered to said Sarah D. Partee, and even if they were, no notice was ever given thereof to the trustee in said trust-deed, and if in any manner to be effected by this allegation in said bill, this respondent demands strict proof.

This respondent, further answering, says that if any such agreement as alleged in said bill was made by William B. Partee, as set forth in said receipt (Exhibit D) to complainants' bill, was, as is shown on the face of said alleged receipt, *was* made long after the expiration of the ninety days for the acceptance of said terms of said trust-deed, and the said receipt is not signed by Sarah D. Partee, the wife of Wm. Partee, who was the debtor in said original notes and the true owner of said lands and the other property embraced in said , nor does it appear by said bill that said W. B. Partee was authorized as the agent of said Sarah D. Partee to sign said receipt or carry out said settlement, and he claims the same benefit thereof as if he had specially demurred to that part of said bill, or pleaded the same thereto.

This respondent, further answering, says that he is advised and believes, and so says, that said complainants and other creditors of said Sarah D. Partee having failed within the time and in the manner prescribed by said trust-deed to accept the provisions thereof, that said deed by reason thereof became inoperative and void, and he claims the same benefit thereof
91 as if he had specially pleaded the same. Respondent admits the suit and judgment of James Stuart against Wm. B. and Sarah D. Partee.

Respondent, further answering, says that he believes it to be true that said W. B. & Sarah D. Partee made a release of errors in the said judgment against them in favor of James Stuart.

Respondent, further answering, says that he is informed and believes, and so says, that said release of errors was accepted and agreed to by said James Stuart for the following reasons: That by the laws of the State of Mississippi then in force, said defendants in said judgment could have taken up the same to the high court of errors and appeals of said State to operate as a supersedeas thereof, with bond for costs, and said case by the

ordinary proceedings in said court would have been long protracted and delayed; that at the time said defendants in said judgment could have sued out an injunction without bond or affidavit, and thus have delayed the collection of said judgment; that said William B. Partee and Sarah D. Partee had given assurances to said plaintiff in said judgment that he would pay the same in the following fall.

Respondent, further answering, says that he admits that the said Partee and wife prosecuted a writ of error from said judgment in the circuit court of Yazoo County, Mississsippi, to the high court of errors and appeals, but from his knowledge, information, and belief denies that said writ of error was dismissed upon any pretence or device between them, the said Partee and wife and Robert Bowman, trustee under said trust-deed, with the fraudulent intent to hinder, delay, and defraud the said complainants. This respondent says that he is informed and believes, and so says, that said writ of error was prosecuted by said W. B. Partee & wife, without the sanction, approval, or previous knowledge of said Robert Bowman.

Respondent, further answering, says that he is informed and believes, and so says, that said writ of error was prosecuted by said Partee and wife under the laws of this State, as they had a right to do, principally for the delay, and that the attorneys of said Stuart to said writ of error plead in said high court of errors and appeals said release of errors in said complainants' bill mentioned, and that upon said plea said judgment of said circuit court of Yazoo County in favor of said James Stuart against said Sarah D. Partee was affirmed by said court of errors and appeals; a certified copy of said writ of error, plea, and judgment of said high court of errors and appeals will be read on the final hearing of this cause.

Respondent, further answering, says that in the prosecution of said writ of error said Partee and wife were represented by Mr. Pruvitt, an attorney of their own choice, who fully understood and attended to their interests. Respondent is advised and believes, and so says, that there was no irregularity in the said judgment of Stuart against Partee and wife, or in the proceedings thereto, as to render the same void, as charged in said bill, and if there were such, this court has no jurisdiction to correct the same, and if there were any such, the same has been cured by the judgment of said high court of errors and appeals, and this respondent claims the same benefit thereof as if he had specially pleaded the same.

Respondent, further answering, says that he is advised and believes, and so says, that said release of errors was valid, and that being based upon indulgence of payment of said judgment that this was a sufficient consideration and denies that it was not executed according to law, as he is advised and believes; admits the levy of said execution, and says
92 that said lands were not sold by reason of said writ of error which was sued out as a supersedeas of said judgment.

Respondent, further answering, says that he is informed and believes, and so says, that after the affirmance of said judgment by said high court of errors and appeals, said writ of venditioni exponas was sued by the attorneys of James Stuart, viz, Wilkinson & Bowman, to sell said lands so previously levied on under said writ of fieri facias.

This respondent, further answering, says that he is advised that said return on said writ of fieri facias does not avoid said sale under said venditioni exponas, but said return at most could amount to only an irregularity

therein, which would not vitiate said sale. Respondent admits the sale and the deeds by S. M. Dyer, sheriff of said county of Yazoo, to James Stuart and James D. Partee. Respondent, from information and belief, denies that John T. Heth was not the deputy of S. M. Dyer, the sheriff, at the time stated, and if in any manner to be effected by this allegation demands strict proof.

Respondent, further answering, says that he is informed and believes, and so says, that for a long time previous to said sale under venditioni exponas, and said levy under said writ of fieri facias, and at the time of said sale of said lands to said Stuart and James D. Partee, that said Heth was acting as the deputy of said Dyer, with his sanction and approval; and this respondent is advised and believes, and so says, that said Heth, if, as he does not admit, was not the regular appointed deputy of said Dyer, was a deputy de facto, and all his acts as such as to third parties was valid and legal.

Respondent, further answering, says that although the return on said writ of venditioni exponas of said sheriff may show that said lands were sold on the 5th of January, 1869, yet this respondent is informed and believes, and so says, that they were in fact sold on the 4th day of January, 1869, being the first Monday of said month, and a regular sale day according to law, and that due and proper notice as required by law was given of the time and place of said sale, and that said return is simply a clerical error on the part of said sheriff or his said deputy. This respondent is advised and believes, and so says, that from such advice and belief he denies that the said writ of venditioni exponas was issued without authority of law or in contravention of the statute; and if there was any irregularity in the issuance thereof it was not such as to avoid said sale of said lands as to innocent purchasers. Respondent further says that he is advised and believes, and so denies, that the return of said vendi. is such as to avoid the sale thereunder, and in like manner denies that the judgment on which said sale is predicated is void or voidable. And respondent is further advised that said complainants cannot in this proceeding reverse or set aside said judgment. Respondent in like manner denies that said release of errors is void, and that said sale was not advertised according to law, or made on a sale day; denies, from his information and belief, that the proceedings under which said sales were made were fraudulent and void, or intended to hinder, delay, and defraud the creditors of Wm. B. and Sarah D. Partee, or that the sheriff failed to give the notice of sale as required by law, or that said sale was not on a regular sale day. Respondent is advised and believes, and so says, that even though the names of the purchasers and the place of sale are not mentioned in said writ, yet said sales are not, by reason thereof, vitiated or void.

Respondent, further answering, that from information and belief he denies that said James D. Partee was not present at said sale; that
93 although James Stuart was not actually present, yet he was represented by his attorneys, Wilkinson & Bowman, and by his agent, Edward Drenning; denies, from information and belief, that no part of the purchase-money was paid, or that said sale was consummated upon an agreement between said R. Bowman, William B. and Jas. D. Partee that part of the lands should be bid in by said Stuart for his debt, and the residue by James D. Partee.

Respondent, further answering, says that said sale, as he is informed and believes, was conducted by said Dyer, sheriff, under the advice of said Wilkinson & Bowman, the attorneys of said Stuart and said Edward Drenning, and was bona fide and free from fraud or collusion. Respondent is informed and believes that there was no previous understanding between said R. Bowman & Wm. P. Partee as to said sale, and he is further informed and believes that there was no agreement that said Partee should pay said Bowman his fee as attorney.

Respondent, further answering, says, from his information and belief, he denies that there was any agreement or understanding between said Bowman and Partee to secure the enjoyment and possession of said property to Wm. B. & Sarah D. Partee, or to keep the same in the family, as charged in said bill.

Respondent, further answering, says that, from his information and belief, he denies that said William B. & Sarah D. Partee, or either of them, at the time said execution was levied on said lands, or any time thereafter, until the day of said sale, had any personality of any kind upon which a levy could be made to satisfy said judgment of James Stuart, or any part thereof. Respondent, from information and belief, denies that said Bowman ever gave any directions or orders to said Dyer, sheriff, as to which property should be levied on under said execution, or that said Bowman was, as to said suit of James Stuart, or in any of its proceedings, the attorney of said William B. and Sarah D. Partee, or in any manner whatever representing their interests or views; but, on the contrary, this respondent is informed and believes that said William B. & Sarah D. Partee had an attorney other than said Robert Bowman, who represented them.

Respondent, further answering, says that, from his information and belief, the said complainants did not rely on said Robert Bouman, as trustee, for the protection of their debts, as charged in said bill, because they did not, as this respondent is informed and believes, ever accept the provisions of said trust-deed as required.

2d. Because they never gave said trustee any notice of their acceptance of the provisions of said trust-deed as required.

3d. That although the first of said pretended novated notes was due on the 1st of January, 1868, the said trustee was never requested to act or to take steps to enforce payment thereof under said trust deed.

4th. Because said Canal Bank and Crescent City Bank, complainants, brought suit on the original notes, pretended to be settled on the basis of said trust-deed, in the circuit court of Yazoo County, Mississippi, and at the time of sale under said vendi. issuing under the judgment of said Stuart, said Canal and Crescent City Bank had attorneys resident in Yazoo City, the county-seat of said county of Yazoo, who had full notice and knowledge of said sale.

5th. Because this respondent is informed and believes that said Canal & Crescent City Bank gave verbal notice to said R. Bouman, the trustee under said trust-deed, and one of the attorneys of said Stuart, that
94 they had not and would not accept the settlement provided in said deed, as well also did other creditors in said deed make the like statement.

Respondent, further answering, says that although said *said* complain-

ants may have had ample means to pay off said judgment, yet they knew at the time, or a part of them, through their attorneys in New Orleans, that it was a prior incumbrance and lien, and had full knowledge thereof from November , 1861, the date of said deed; yet, as far as this respondent knows, no offer was made to pay the same, and as the attorneys of said complainants, or a part of them, had put said original claims in the hands of attorneys at Yazoo City, and as all of them had failed to signify their acceptance in writing to said R. Bouman, of the provisions of said deed, this respondent says that for these reasons he does not believe it to be true that they looked to said trustee to give them notice of any proceedings in said suit and judgment of said Stuart, and as he is informed of the facts in all of said proceedings, says that there was no fraud on the part of said Stuart or of said R. Bouman, or W. B. and Sarah D. Partee.

This respondent, from information & belief, denies that the debt of said Stuart reduced to judgment was included in said trust-deed. Admits that the lands in Yazoo were of far greater value than those of Tallahatchie and Sunflower Counties, and, as this respondent is informed, at the time of said sale lands were at comparatively depreciated value, but is advised that said Stuart nor any other judgment creditor was by law bound to wait for a rising market of lands to make their judgment. Denies, from information and belief, that said sale was made to hinder and delay complainants. Denies, from information and belief, that James D. Partee was not a bona fide purchaser, without motive of fraud, if any there was, and demands strict proof.

Respondent, further answering, says that at the time of said sale to James D. Partee there was on that portion purchased by him a lien under a decree of the chancery court of Yazoo County, Mississippi, in favor of Edward Drenning, administrator of Christopher Todd, deceased, amounting, principal and interest, to over eight thousand dollars; that said lien was, at the time, wholly unsatisfied, and that this fact was made known by said administrator at the sale. The lands purchased by said James D. Partee were known as the "No Mistake" plantation, and said decree was based on a devise of the will of James Dick, who bequeathed said lands to said Sarah D. Partee. A certified copy of said decree will be produced and read on the hearing of this cause. This respondent says that he is informed and believes, and so says, that at the time said trust-deed was made that, lands in the Yazoo Valley were of much greater value than at the time of said sale.

Respondent, further answering, says that from information and belief, he denies that said Robert Bowman, as trustee, knew that said complainants had in good faith accepted said new notes and trust-deed and were reposing on him in the premises, and this respondent, also from information and belief, denies that said Partee had knowledge of complainants' acceptance of said notes in good faith. Respondent denies that said lands at the time of said sale were worth forty or fifty thousand dollars, but believes that they brought their market value, for, as this respondent is informed and believes, there were a large number of persons present at said sale, amongst whom was R. A. Barkley, the judgment creditor second in priority to said Stuart, and N. G. Nye, the attorney for several other judgment creditors, they being there present to make said lands realize
95 their value or secure their money. Denies, from information and

belief, that the sum of $5,750, or any other sum, was fixed by parties as falsely charged in said bill, to be bid for said lands, or that there was any fraudulent purpose in said sale to hinder and delay creditors, and if in any manner to be effected by this or other allegations in said bill demands strict proof.

This respondent, from information and belief, denies that no money was paid on the day of said sale, and says that said James D. Partee paid the full amount of his bid, on the day of said sale, and that said W. B. & Sarah D. Partee, having no other visible property on which a levy could be made, the said Stuart afterwards paid said costs. Respondent admits the trust-deeds executed by James D. Partee and Jeanie, his wife, at the times and dates set forth in said bill to Fountain Barksdale, trustee, for use of Nelson, Lamphier & Co. Respondent denies that said sum of $27,000.00, mentioned in the trust-deed of 1869, and the amount of thirty-three thousand five hundred dollars in the trust-deed of 1870, or any part thereof, represented antecedent debts of Wm. B. and Sarah D. Partee, or either of them, nor was said trust-deeds made or intended to secure any debt or part of a debt due by said Sarah D. and Wm. B. Partee, or either of them. Denies that said money advanced to said James D. Partee, and secured by said trust-deeds, was paid off and discharged by said James D. Partee. Denies, as before, that any "old debt" of Sarah D. and Wm. B. Partee or either of them was embraced in said trust-deeds. Denies that any debt of any kind of Wm. B. and Sarah D. Partee was embraced in or secured by said trust-deed.

This respondent, further answering, says that at the time of the execution of said trust-deeds the said William B. and Sarah D. Partee were not, nor was either, indebted to said firm of Nelson, Lamphier & Co. in any manner whatever, nor were they indebted to the firm of S. O. Nelson & Co., the predecessors of said firm of Nelson, Lamphier & Co. Denies that there was any secret agreement or understanding between this respondent or of the firm of Nelson, Lamphier & Co. and James D. Partee at the time of said sale in said bill mentioned, by F. Barksdale, trustee, that the same was not to operate as a complete sale and conveyance. Denies that at the time of said sale or before that there was any agreement that James D. Partee was to have the benefit or right of redemption, as charged in said bill. Denies that said James D. Partee, William B. Partee, and Sarah D. Partee are not now or were at the time of filing said bill, or have been since said sale, in possession of said lands so sold by F. Barksdale, trustee, receiving, using, and appropriating the rents, issues, and profits thereof. This respondent says that at the time of filing said bill the said William B. and Sarah D. Partee were, as he is informed and believes, residents of the city of St. Louis, in the State of Missouri, and they there resided at the time of said sale by said Barksdale as trustee. Respondent admits that said trust-deed made by Sarah D. and William B. Partee was recorded as stated in said bill, in the record of deeds of Yazoo County, Mississippi. This respondent says, however, that said judgment of James Stuart was rendered against said Sarah D. Partee and W. B. Partee to be made of the separate property of said Sarah D. Partee, on the 6th of June, 1866; that said trust-deed under which complainants pretend to claim was not executed until the 9th of November, 1866; that said judgment of Stuart had been affirmed by the high court of errors and appeals of the

State of Mississippi, and even if said deed was valid this respond-
96 ent is advised that said judgment was entitled to priority of satisfaction over the creditors named in said trust-deed.

This respondent, further answering, says that if there were any irregularities in said suit, proceedings, and judgment of Stuart against W. B. Partee and wife, or even fraud, which he does not by any manner of means admit, yet this respondent and the firm of Nelson, Lamphier & Co. had no notice or knowledge thereof; that believing James D. Partee had bought said lands in good faith, and had a good title thereto, subject only to the said decree of Edward Drenning, administrator of Christopher Todd, deceased, the firm of Nelson, Lamphier & Co. upon the faith of the security of said trust-deeds to F. Barksdale were induced in good faith to advance the amounts of money therein named, and upon said James D. Partee failing to pay the same, this respondent, at said sale by said trustee, in good faith and for a valuable consideration, bought said property; and whatever of truth, if any at all, may be in complainants' bill, this respondent claims that he is an innocent purchaser without notice, and claims the same benefit thereof as if he had specially pleaded the same. Respondent denies that he and his said firm are not bona fide purchasers, and again says that if there was any infirmity, fraud, irregularity, or impropriety in said judgment or execution, or other proceedings thereunder, or of any proceedings in the suit precedent to said judgment, they had no notice or knowledge thereof. This respondent further says that in the latter part of the year 1865 the said defendant James D. Partee and his brother went into the planting business under the firm name and style of Partee & Brother. The firm of which this respondent was a member, under the name and style of S. O. & T. A. Nelson & Co., furnished them with money and supplies to carry on their planting business in Yazoo County, Mississippi. William Partee, the brother of James D. Partee, died in May, 1868. The firm of S. O. & T. A. Nelson & Co., about the 1st of October, 1867, was changed into that of Nelson, Lamphier & Co. At the time of the death of William Partee, said firm of Partee & Brother was largely indebted to said firm of Nelson, Lamphier & Co., which was assumed by James D. Partee, the survivor, and secured by said trust-deeds mentioned in complainants' bill to F. Barksdale, trustee. Respondent says that at the time of said sale by said Barksdale, trustee, there was due by said James D. Partee, on his own account and his assumption, as survivor, the sum of thirty-three thousand five hundred dollars, to said firm of Nelson, Lamphier & Co., and said sale of said lands and personalty was made by said Barksdale at the instance and request of said firm of Nelson, Lamphier & Co., for the purpose of paying off and discharging said indebtedness. This respondent says that he bid in said property at said sale to secure the debt due by said James D. Partee to said firm of Nelson, Lamphier & Co., and that said sale was made, or caused to be made because they believed that it was absolutely necessary to secure their debt. This respondent says that said property, including said lands and personalty, were bought by him for the benefit of his said firm, and that he now holds the same for the use thereof. Respondent says that for said firm he is cultivating said lands, and that after said sale he employed said James D. Partee at a salary to manage the same under the control and supervision of him, this respondent, and beyond this said James D. Partee

has no right or interest in said property, and that William B. and Sarah D. Partee have no right, benefit, or use of said property whatever.

97 This respondent having fully answered, prays to be hence dismissed with his reasonable costs, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
Att'ys.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

Before me, R. B. Mayes, a United States commissioner for said district, personally appeared Thomas A. Nelson, the defendant in the foregoing answer, who, on oath, says that the facts set forth and stated therein as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

T. A. NELSON.

Sworn to and subscribed before me at Yazoo City this 10th day of February, A. D. 1874.

[SEAL.] R. B. MAYES,
U. S. Commissioner.

(Endorsed:) Filed February 11, 1874. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 27 day of February, A. D. 1874, the answer of W. B. Partee was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Answer of W. B. Partee.

To the honorable the judge of the circuit court of the United States for the southern district of Mississippi, sitting in equity:

The answer of W. B. Partee to a bill of complaint exhibited against him and others in this honorable court by the Canal Bank of Louisiana.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says that he denies that he and Sarah D. Partee were indebted to complainants on the 19th of November, 1866, as charged in said bill, but admits that on that day the said Sarah D. Partee, his wife, who was the owner of separate property, was indebted to complainants as follows, to wit: to said Marsh, Denman & Bedault in the sum of five thousand dollars, due Feb'y 18th, 1862, and the sum of four thousand dollars due May 13, 1862; to the said Crescent City Bank the sum of four thousand dollars, due March 27th, 1862; to the said Bank of Louisiana the sum of four thousand dollars, due December 23d, 1861. The said indebtedness

98 was evidenced by the promissory notes of said Sarah D. Partee authorized by W. B. Partee, all payable to S. O. Nelson & Co., and by the latter endorsed in blank and held by said parties complainant respectively as aforesaid. This respondent says that said Sarah D. Partee, at the date aforesaid, was also indebted to said complainants in manner as

follows: To the Canal or Canal & Banking Company of New Orleans in the sum of five thousand dollars, due January 27, 1862, and also the further sum of five thousand dollars, due January 21st, 1862; to the Union Bank of Louisiana the sum of four thousand four hundred and fifteen dollars, due February , 1862; to E. Dupassier & Co. the sum of $2,850, due 11th December, 1862, and also the sum of four thousand three hundred and forty-nine dollars, due Jan'y 23d, 1862. All of said last-named indebtedness was evidenced by the promissory notes of said Sarah D. Partee, authorized by W. B. Partee, payable respectively to Rotchford, Brown & Co., and by them endorsed. This respondent says that said promissory notes hereinbefore named, as well as the other indebtedness of said Sarah D. Partee at the time, are set forth and contained in the trust-deed marked "Exhibit A" to complainants' bill, and to which reference is hereby specially made.

This respondent, further answering, says that at the time said original notes and debts in said trust-deed were created, that the said Sarah D. Partee in her own separate right was the owner of a very large and valuable property, consisting in part of several plantations on the Yazoo River in said district, and about two hundred slaves, and also a valuable plantation on Red River in Louisiana, the income of which was sufficient to meet or at least control said indebtedness, but by the result of the war, the destruction of her cotton crops on hand at its commencement, the loss of her mules and other personalty at the close of the late war between the Southern States and the United States, that she was unable to meet said liabilities which are mentioned in said trust-deed. This respondent says that in the year 1866 that some of the creditors of said Sarah D. Partee became pressing for their debts, and this respondent, acting for his said wife, Sarah D. Partee, conferred with other of said creditors and his friends, who advised a composition or compromise of all of her said indebtedness, and this respondent acting upon said advise and with the view to secure all alike and to induce all to accept of terms of settlement, made and executed with his wife, the said Sarah D. Partee, bona fide, said trust-deed marked "Exhibit A" to complainants' bill.

This respondent, further answering, says that at and before the time said trust-deed was executed, some of the creditors of his wife, the said Sarah D., had verbally signified or mentioned to him that they would be willing to accept the terms of composition for her debts named therein, and for these reasons this respondent and his said wife made and executed said trust-deed, with Robert Bowman as trustee.

This respondent, further answering, says that with this view and purpose, and to put all the creditors of said Sarah D. Partee on an equal footing, and to secure all alike as far as possible, this respondent and his wife employed said Robert Bowman, of the law firm of Wilkinson & Bowman, to draft said trust-deed, and who at their request consented to act as trustee. Respondent denies, however, that the whole labor and settlement of conducting the settlement under said trust-deed was performed by said Robert Bowman. This respondent says that he believes it to be true that a letter was written said Robert Bowman, of the firm of Wilkinson & Bowman, in their firm-name, to the tenor and effect as set forth in
99 Exhibit B to complainants' bill, but whether said copy is a true copy of said letter this respondent neither admits nor denies, and

if to be effected thereby demands strict proof. Admits the statement in the original proposition to the attorneys of complainants in New Orleans, as set forth in Exhibit C to said bill.

Respondent, further answering, says that early in January, 1867, he met said Robert Bowman in the city of New Orleans, and at the request of this respondent he called with him on said attorneys in New Orleans, and the said Bowman then stated to said attorneys the importance and necessity of the creditors accepting said trust-deed in writing within the time prescribed, and also, if they did accept, that arrangements should be made for the payment of taxes on said lands in Tallahatchie and Sunflower Counties. The attorney of said complainants, Mr. Hyams, of the firm of Hyams & Jonas, stated that he would get such acceptance in writing if the creditors would agree, and give notice thereof or send the same to said Bowman. This respondent says, that as far as he knows or believes and is informed, such notice of acceptance was never made by said attorney or any one else to said Bowman, and this respondent says that, as far as he knows or believes, the said Robert Bowman, except as aforesaid, never performed any labor or service in inducing a settlement under said trust-deed.

This respondent, further answering, says that although said alleged novated notes bear date the 19th of November, 1866, yet in fact and in truth they were not actually made or delivered on that day. This respondent says that after the day said trust-deed was executed, the said Sarah D. Partee and this respondent signed new or novated notes, payable to all the creditors named in said deed, most of whom resided in the State of Louisiana, and this respondent carried said new notes of the creditors in Louisiana, as well as said trust-deed, to complainants' attorney, Mr. Hyams, of the city of New Orleans, and employed him to effect a compromise of said debts named in said trust-deed according to the terms thereof, and delivered the said new notes and trust-deed to the said attorney of complainants, who undertook to bring about and effect said settlement. Respondent knew that said complainants' attorney, as such, controlled or had for collection a considerable amount of the claims of the creditors of said Sarah D. Partee, and, as he now remembers and believes, particularly the claims of all the complainants.

This respondent, further answering, says that said attorney of complainants, from the time said new notes were put in his hands, which was about some time in , 1866, or early in 1867, up to January 28th, 1868—that said complainants as well as other creditors he thought would accept a settlement upon the terms of said deed, but there was in fact no definite or positive acceptance by said complainants, either verbally or in writing, until the date of said receipt, and said receipt was the only acceptance made, and this respondent submits to this court whether that constituted an acceptance of said trust-deed.

This respondent, further answering, says that, pending the negotiation for the settlement of said debts due by said Sarah D. Partee, the said complainants, the said Crescent City Bank, in the year 1867 brought a suit on the original promissory note mentioned in said trust-deed and recovered judgment thereon, in the circuit court of Yazoo County, Mississippi, on the 11th of June, 1868, for the sum of five thousand nine hundred and ninety-one $\frac{98}{100}$ dollars.

Respondent, further answering, says that said complainant, the Canal

Bank, by the name and style of the New Orleans Canal Banking
100 Company, likewise brought suit on said note due 27th of January, 1862, in said circuit court of Yazoo County, and recovered judgment thereon against said Sarah D. Partee on the 11th of June, 1868, for the sum of seven thousand five hundred and forty-eight $\frac{88}{100}$ dollars.

Respondent, further answering, says that many other creditors in said trust-deed mentioned also brought their suits on their original claims in said circuit court, among whom were R. A. Barkley, Wm. Silliman, S. B. Newman, Wm. J. McLean, Jonathan Montgomery, John A. Miller, and Charles E. Altor; this respondent says that he admits that he signed said receipt filed as Exhibit D to complainants' bill.

This respondent, further answering, says that of said original notes and claims mentioned in said trust-deed there was only returned to this respondent or his wife, the said Sarah D. Partee, the note due the Louisiana State Bank, the notes due Edward Dupassier, the note of Canal Bank of Louisiana, or New Orleans Canal Banking Company, due 21st January, 1862, the notes due Connor & Co., and the note due Stark, Stauffer & Co., and, perhaps, that of McStea, Value & Co.

This respondent, further answering, says that on said original note due the Canal Bank on the 27th of January, 1862, a copy thereof was delivered to this respondent, upon which was endorsed, as respondent believes, in the handwrite' of Mr. Hyams, the attorney of complainants, "Original in hands of Miles & Epperson;" this respondent says that Miles & Epperson were attorneys of Yazoo City, Mississippi, who brought suit on said original note and prosecuted the same to judgment, as aforesaid. Said copy so delivered to this respondent with the endorsements thereon is herewith filed as Exhibit 1 to this answer and made part hereof.

This respondent, further answering, says that he denies that either he or the said Sarah D. Partee ever received or that there was ever surrendered to him or the said Sarah D. Partee said original note due to the Union Bank of Louisiana or the original note due to I. Marsh Denman & Co., or the original note due to Canal Bank on 27th January, 1862, or said original note due to Crescent City Bank. This respondent says that this allegation of said complainants is a mere pretence and falsehood.

This respondent, further answering, says that at the time he signed said receipt marked "Exhibit D" it was at the suggestion and upon the request of Mr. Hyams, who had been acting as his attorney in effecting a settlement under said trust-deed. Respondent admits the suit of Stuart, and that Wilkinson & Bowman were his attorneys, the return upon the process, and the judgment in his (Stuart's) favor, as charged in said bill; admits the release of errors, as charged, but says it was not pretended but intended to be bona fide; admits that this respondent and his wife prosecuted a writ of error to the high court of errors and appeals.

This respondent, further answering, says that his chief and principal reason for prosecuting said writ of error was for delay, and for the purpose of reversing said judgment in favor of said Stuart, if there was legal ground for reversal; denies that said writ of errror or said suit was dismissed by this respondent or his wife, said Sarah D. Partee, or by procurement of themselves and said Robert Bowman, fraudulently intending to hinder, defeat, and delay said complainants. This respondent says

that this allegation is wholly false and unfounded in truth or fact. Respondent says that he, acting for his wife, employed an attorney of
101 well-known integrity, Mr. J. C. Prewitt, of Yazoo City, to prosecute said writ of error from said judgment, the object being chiefly, as before stated, for delay, but with the expectation that, perhaps, said judgment might be reversed. Respondent says that he relied fully on his said attorney, and confided in him to manage said case in said high court as he thought most advisable.

Respondent, further answering, says that he is informed and believes, and so says, that said release of errors was pleaded in said high court of errors and appeals by said Stuart, and said judgment of said circuit court of Yazoo County was affirmed, and that neither said writ of error or said suit was dismissed by said high court of errors and appeals; denies that said suit or writ of error by this respondent and his wife was a mere trick or device to consummate a fraudulent purpose to defeat said trust-deed under complainants' claims.

Respondent neither admits nor denies that said judgment in favor of Stuart against himself and wife was void, and as the grounds alleged in said bill for said judgment being void are simply questions of law and not of fact, this respondent submits the same to this honorable court as if he had specially demurred to that part of said bill, which sets up matters of law in avoidance of said judgment.

This respondent, further answering, says that in January, 1867, an execution issued in favor of said Stuart, on said judgment, against said Sarah D. Partee, which was levied on said lands in said bill and trust-deed mentioned; and this respondent and his wife, Sarah D. Partee, for the purpose of getting time and with the hope of paying said judgment in the following fall, agreed to release all errors (if any therein) provided the said Stuart would stay the enforcement of said execution, and not have the property levied on sold until the following fall or until the 1st of January following. Respondent says that this agreement to stay said execution was not in writing and was conditioned upon the rights of said Stuart not being impaired or effected by any subsequent judgment creditor making a levy. This extension of sale or enforcement of said execution was the consideration of and the reason of said release of errors.

This respondent, further answering, says that he submits to this court whether said release of errors is valid or in proper form. This respondent further says that he is informed and believes, and so says, that said release of errors was pleaded to said writ of error in said high court of errors and appeals, and said judgment in favor of Stuart was affirmed upon said plea. This respondent says that he does not know at whose instance or direction said execution was issued, or at whose instance said vendi. was issued, or of the return thereon, except as appears by Exhibit F to said bill.

This respondent, further answering, says that as to the sufficience of said return on said writs, that he is advised that it is a mere question of law, and he submits the same to this court as if he had specially demurred to that part of said bill of *said* complainants' *bill*.

This respondent, further answering, says that he is informed and believes that at the time of the levy of said execution and the sale under said writ of vendi. that the said John T. Heth was the deputy of said S.

M. Dyer, sheriff of said county of Yazoo. Respondent says that said Heth was at said times acting as deputy sheriff under the sanction and approval of said Dyer.

This respondent, further answering, says that notwithstanding said writ of venditio' exponas was returned, that the lands therein named were sold on the 5th of January, 1869, and notwithstanding said deed
102 to said Stuart recites that the lands conveyed to him were sold on the said 5th day of January, 1869, yet this respondent says that in fact and in truth said lands bought by said James D. Partee and said Stuart were sold under said writ of venditioni exponas on the 4th of January, 1869, being the first Monday of that month and a regular sale day, and that said lands were sold upon due notice and advertisement as prescribed by law.

This respondent, further answering, says that he does not know at whose instance or direction said execution or said writ of venditioni exponas issued.

This respondent, further answering, says that he is advised and believes that said sale was not void as charged by said complainants. Respondent denies that said James D. Partee was not present at said sale of said lands under said writ of venditioni exponas. Denies that no part of the purchase-money of said lands was paid; denies absolutely and positively that said sale was consummated upon the agreement between this respondent, R. Bowman, and James D. Partee, that part of said lands should be bid in by said Stuart for his debt, and that the residue should be bid in by James D. Partee; denies that there was any such agreement that this respondent and James D. Partee should pay the fees of Robert Bowman; denies that this respondent or said James D. Partee ever paid one cent of the fees of said Bowman as attorney of said Stuart or for any matter or thing done by him under said judgment of said Stuart in connection with the sale of said lands. This respondent denies that either he or his wife, the said Sarah D. Partee, had any personalty, as charged in said bill, out of which said judgment could have been made, either at the time of the levy of said execution or at the time of the sale under said writ of venditioni exponas. Respondent denies that said Robert Bowman was the attorney of himself, this respondent, and said Sarah D. Partee in any of the matters complained of in said bill, except as aforesaid.

This respondent, further answering, says that said complainants, from the fact of their bringing the suits aforesaid on their original claims, and from the fact of their failing to give said trustee notice, either verbally or in writing, of their acceptance of the provisions of said trust-deed, and from their whole conduct in the transaction under said trust-deed as before stated, did not rely on said Bowman to protect their interest, and this allegation is simply unfounded and untrue, as this respondent believes.

This respondent, further answering, says that said complainants or their attorney knew full well of said judgment of James Stuart as early as the latter part of the year 1866, as well also as a lien in favor of Christopher Todd, both of which had priority and preference over said trust-deed. This fact was communicated to them or their attorney, both by this respondent and said Bowman, yet said complainants, as far as this respondent knows or believes, never offered to pay the same and never called on said trustee to act as such, and never gave him any notice of their acceptance

of said trust-deed, but, on the contrary, some of them by employing local attorneys to bring suit on their original claims, thus plainly signified their abnegation of said trust-deed.

This respondent, further answering, says that said levy of said execution on said lands in Yazoo County, the writ of error, the writ of venditioni exponas, the sale of said lands in accordance with legal advertisement, were all facts of which the attorneys of said complainant ought and should have taken notice of. Respondent denies that the debt or claim
103 upon which the judgment of said James Stuart was based was provided for in said trust-deed, but, on the contrary, this respondent says that the said Stuart expressly refused to have his claim included in said trust-deed or to accept the provisions thereof. Admits the Yazoo lands were the only property of appreciable value as the result has turned. Respondent knows nothing of the correspondence between complainants' attorneys and R. Bowman as to sale of said lands as charged in said bill, and if to be effected thereby demands strict proof. Respondent denies that complainants accepted said new notes, except as aforesaid. Denies that said complainants were reposing with confidence on this respondent. Denies that he, this respondent, had anything to do with, or had in any manner any direction, control, or management of said sale under said Stuart judgment, but, on the contrary, this respondent says that he had used all the law's delays existing at the time to postpone said sale, with the hope and expectation of paying off said judgment, and with the view that the creditors named in said trust-deed would all accept the same.

This respondent, further answering, says that at the time said trust was executed the said lands in Yazoo County, at the then market value, were worth from forty to fifty thousand dollars. There had been on the said lands about fifteen acres of said land cleared. In all, there was between four and five thousand acres. This respondent says that by reason of the disastrous seasons of 1866 and 1867 for cotton crops, and the unprecedented overflow of 1867, which submerged the highest lands in the Yazoo Valley, and the demoralization of labor from the causes aforesaid, that Yazoo Valley lands were very greatly reduced and depreciated in value at the time of said sale; denies as positively and absolutely false and untrue that the sum of $5,750.00, or any other sum, was fixed by agreement to be bid for said lands; denies that said sale was in consummation to hinder and delay complainants. Respondent again denies that he had anything to do with the control, direction, or management of said sale; denies that no money was paid for the purchase of said lands; admits the trust-deeds by James D. Partee to Nelson, Lamphier & Co. This respondent denies that any part or portion of the consideration of said trust-deed was for any indebtedness of this respondent and his wife, Sarah D. Partee, or either of them. Respondent knows nothing of any understanding between said James D. Partee and Nelson, Lamphier & Co., as to the effect or operation of said sale by F. Barksdale, trustee, and if any such agreement or understanding existed this respondent knows nothing of it.

This respondent, further answering, says that from the time of the sale of said lands as charged in said bill, neither this respondent or his wife, the said Sarah D. Partee, have been in possession thereof, nor have they or either of them ever received any rents, use, receipts, or profits thereof.

This respondent, further answering, says that he does not know the amount of indebtedness of said James D. Partee to Nelson, Lamphier & Co. at the time of said sale by F. Barksdale, trustee, and neither admits nor denies the same as charged in said bill, except that this respondent expressly denies that any part thereof was for any indebtedness of this respondent or his wife, Sarah D. Partee.

To special interrogatory 1st this respondent says, that he did not consider it his duty, nor did he consider himself under any obligation to give complainants notice of said sale, because complainants' attorney' in New Orleans, who were also attorneys of this respondent and his wife, had put a portion of said claims in the hands of attorneys at Yazoo City,
104 and this respondent, by reason thereof, supposed that they had repudiated said trust-deed. Respondent further says that he is advised and believes, and so says, that it was not his duty to give said complainants notice of said sale.

To interrogatory 2d respondent says, that said lands were at that time, that is, the day of the sale, worth about the amount or perhaps more than what they sold for. Respondent says that there was an incumbrance on said "No Mistake" and "Tyrone" lands of over eight thousand dollars, under a decree of the administrator of Christopher Sarah D. Partee. The inducement to make said release of errors was to obtain time for the payment of said judgment. This was the only consideration.

To 4th interrogatory respondent answers, that said execution by reason of said release of errors was stayed until January, 1868, and this respondent and his wife, finding that they were unable to pay said judgment as they expected to do, sued out a writ of error to the high court of errors and appeals, and until the decision of said writ of error the said execution was suspended. Respondent says that immediately after said decision of said high court of errors and appeals said writ of venditioni exponas was issued and said sale had thereunder.

To interrogatory 5th respondent answers, I never did, nor did Sarah D. Partee ever purchase said judgment of said Stuart at any time, either before or after said sale.

To interrogatory 6th respondent answers, I was present at said sale; said lands were sold on the 4th of January, being the 1st Monday of January, 1869, and were sold by S. M. Dyer, sheriff of Yazoo County, Mississippi. There was also a large number of other persons present; among the number was Richard Barkley, a judgment creditor next in priority to James Stuart. There was, as I am informed and believe, the sum of five hundred and fifty dollars paid on that day by James D. Partee on his purchase of said lands, to the attorneys of said Stuart.

To 7th interrogatory, this respondent answers that James D. Partee and a number of freedmen are in the possession of said lands, holding the same, as respondent is informed and believes, for Thos. A. Nelson, or Nelson, Lamphier & Co., the said James D. Partee acting as agent or manager of said Nelson, or said Nelson, Lamphier & Co., as this respondent is informed for wages or a salary. This respondent and his wife, said Sarah D. Partee, and their family, except James D. Partee, resided for some time after said sale under said vendi by S. M. Dyer, in Tennessee, and now, and for more than two years past, have resided in St. Louis, in the State of Missouri. Respondent says that since said sale

under said vendi, the only claim or right that either he or wife set up was the homestead exemption for his wife.

To 8th interrogatory, respondent says that as he is informed and believes that said debt to Nelson, Lamphier & Co., by James D. Partee was commenced in 1866 and continued on from year to year, and was for plantation supplies, mules, farming implements; a part was for money advanced by said Nelson, Lamphir to said James D. Partee, with which the aforesaid payment was made by him on said No Mistake lands at said sale under said vendi.

This respondent says that he does not know who made the examination for said Nelson, Lamphier & Co. before said trust-deed was executed; don't know whether they or their attorneys inspected said record, nor does this respondent know who was their attorneys in the matter
105 of the execution of said trust-deed. Having fully answered, respondent prays to be hence dismissed with his reasonable costs, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
For Def'ts.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, W. H. Mangum, a United States commissioner at Yazoo City, in and for the district aforesaid, personally appeared William B. Partee, the defendant in the foregoing answer, who makes oath and says that the facts set forth therein, as of his own knowledge, are true, and those stated upon the knowledge and information of others he believes to be true.

W. B. PARTEE.

Sworn to and subscribed before me, at Yazoo City, this 23 day of February, A. D. 1874.

[SEAL.] W. H. MANGUM,
U. S. Commissioner for the Southern Dist. of Miss.

(Endorsed:) Filed February 27, 1874. Geo. T. Swann, cl'k.

Exhibit 1 to answer of W. B. Partee.

(Copy.)

$5,000.] NEW ORLEANS, *January 5th*, 1861.

On the 27th January, 1862, I promise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, five thousand dollars, value received, with eight per cent. per annum interest after maturity, until paid.

(Signed) SARAH D. PARTEE.

Authorized by me—

W. B. PARTEE.

(Endorsed on back:) Original held by Canal B'k. Canal B'k. Original in hands of Miles & Epperson.

(Endorsed:) Rotchford, Brown & Co.

We waive demand and protest of this note and service of notice on us as endorsers, and hold ourselves bound for the payment thereof in same manner as if it had been regularly protested and notice served on us.

New Orleans, 18th Nov., '61.

(Signed) ROTCHFORD, BROWN & CO.,
P. pro. A. J. AIKEN.

NEW ORLEANS, *July* 10, 1866.

Received for collection from the N. O. Canal and Banking Company the original of the above note.

And afterwards, to wit, on the 28th day of February, A. D. 1874, the answer of James Stuart was filed in the clerk's office of said court, which, with the exhibits thereto, are in the words and figures following, to wit:

106 To the honorable the judge of the circuit court of the United States for the southern district of Mississippi, in equity sitting:

The answer of James Stuart to a bill of complaint exhibited in this honorable court by the Canal Bank of Louisiana *et* al. against W. B. Partee, his respondent, or others.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says that of his own knowledge he knows nothing of the alleged original indebtedness of said Sarah D. Partee to complainants or the novation thereof, or of the existence of said trust-deed, or of the letter of Wilkinson & Bowman, or of said proposition & receipt of Sarah D. Partee, except as appears by the exhibits to said bill, and if in any manner to be effected thereby demands strict proof.

This respondent further answering, says that he admits the suit of himself against Sarah D. and W. B. Partee on said promissory note in said bill mentioned, and that Wilkinson & Bowman were his attorneys, and that judgment was recovered by default in the circuit court of Yazoo County, Mississippi, on the 6th day of June, 1866, as charged in said bill; admits the release of Enos *set* forth in said bill, but says that it was not pretended but bona fide.

This respondent admits the suit of error from said judgment, but denies from his knowledge and information that said Robert Bowman and said Partee & wife procured the writ of error to be dismissed for the purpose of *a* hindering, defeating, or delaying said complainants.

Respondent, further answering, says that he does not know the purpose of said Partee in suing out said writ of error, but believes it to have been to defeat or delay this respondent in the collection of his judgment.

This respondent says that he is informed and believes that said judgment of the circuit court of Yazoo County, Mississippi, was not dismissed by the high court of errors & appeals, but that said release of errors and said judgment by said court was regularly affirmed, as more fully appears by

the records of said court, a certified copy of which will be read on the hearing of this cause.

This respondent, further answering, says that he is advised and believes, and hence denies that said judgment was void and null, or even voidable.

This respondent says that he is advised and believes and so says, that the execution of the process as to Sarah D. Partee and W. B. Partee, her husband, in this respondent's suit against them was in law sufficient.

This respondent, further answering, says that at the time said note was made, on which the judgment of this respondent is based, the said Sarah D. Partee and her husband were residents of the city of New Orleans, in the State of Louisiana. Said note was made there, and was payable there, and was executed according to the laws of that State, and was, as this respondent is informed and believes, legally binding, obligatory upon her, and was not prima facie void.

This respondent says of said original notes mentioned in said trust-deed, William Silliman recovered against other parties judgment in the circuit court of Yazoo County, Mississippi, against W. B. and Sarah D. Partee on the original note due him, and this respondent is informed and
107 believes, and so says, that the note due to said Silliman, upon which said judgment in his favor was obtained, was made and executed as to place, form, & place of payment exactly as the note due to this respondent by said Sarah D. Partee.

This respondent, further answering, says that he is informed and believes, and so says, that there was an agreement made between the attorneys of said complainants, the said Canal Bank of Louisiana, and the Crescent City Bank and the attorneys of said Silliman and the other judgment-creditors of said Sarah D. Partee, that the case of Silliman should be carried up to the high court of errors & appeals of the State of Mississippi as a test case as to the liability of Mrs. Sarah D. Partee on said original notes, and upon full hearing thereof the judgment in favor of Silliman was affirmed by said court, and is reported in 44 vol. Miss. Reports, p. 278.

This respondent, further answering, says that upon said writ of error from the judgment of the circuit court of Yazoo County, Mississippi, in favor of this respondent against Sarah D. Partee, there was before said court the entire record, the declaration, the process and return thereon, the judgment, the plea of the release of errors, and upon said record said judgment of the circuit court of Yazoo County was affirmed; a certified copy of said record will be made on the hearing. Says that the same is yet held and owned by himself, and is not entirely satisfied.

To 1st special interrogatory respondent answers, that he was not present in person at said sale under said vendi., but was represented by his attorneys & Mr. E. Dunning; that, as far as he knows, that there was no adjudications of lands, but that on the lands bought by respondent, R. A. Barkley, a previous judgment creditor run them up to said sum of $5,200.00, at which bid this respondent became the purchaser; and upon said other lands there was a decree of over $8,000, principal & interest, & James D. Partee, as respondent is informed, bought the same subject to said decree.

Copies of all letters received from Wilkinson & Bowman & R. Bowman are herewith filed.

To 3d interrogatory respondent answers, that he did pay a part of the fees to Wilkinson & Bowman, & yet owes them a balance on said judg-

ment. The amount paid was $458.00, and was a part of the money bid by said Partee on said lands.

To int. 4th. No such understanding or agreement existed at any time as far as this respondent knows or believes.

of this either is herewith filed as Exhibits No. 2 to this answer, and urged to be taken as a part hereof.

This respondent, further answering, says that to avoid the delays of the laws thereon existing by the right of the writ of errors & supercedeas with bond only for costs, the right of injunction without and the doubt as to the liability of said Sarah D. Partee in the note due to this respondent, as well as for the purpose of giving the said Sarah D. Partee time to pay said judgment was the condition of said release, the consideration of said release of sums on her part; and this respondent is advised and believes, and so says, that said consideration was good & valid, and sufficient to support said release of errors.

This respondent, further answering, says that in consideration of said release of errors, time for payment of said judgment in favor of this respondent against said Sarah D. Partee was given according to suggestion of the letter of Wilkinson & Bowman, marked as "Exhibit No. 1" in this answer; that the execution mentioned was given on the lands of
108 said Sarah D. Partee, and for the tearms before stated the said levy was not enforced by sale, but was postponed. These were the considerations of the said release of errors.

This respondent, further answering, says that he is informed *in* believes that at the time of the levy of said execution, and at the sale of said lands under said venito, that John T. Heth was the deputy of S. M. Dyer, sheriff of said county of Yazoo.

This respondent, further answering, says that although said deed to him from said Dyer, sheriff of Yazoo County, purports to have been made on the 5th of January, 1869, and recites that the sale of said lands was made on the 5th of January, 1869, yet said sale of said lands was actually made to this respondent under said *bendelu* exponas on the 4th day of January, 1869, the same being a regular sale day. Respondent denies that said sale was not legally advertised.

This respondent, further answering, says that after the levy of said execution, for the reasons before stated, the sale under the same was postponed, and at the expiration of the stay the said Sarah D. and W. B. Partee sued out a writ of errors & supercedeas from said judgment to the high court of errors, and the said case was there pending until/ some time in November or December, 1868, and after the affirmance of said judgment said writ of vendi. was issued and said sale was made thereunder.

This respondent, further answering, says that he denies the 8 causes set out by said complainants why said judgment is void are true.

This respondent, further answering, says that he is informed and believes that said sale was directed and managed by R. Bowman, his attorney, upon conference with Edward Drenning, who was the agent and friend of this respondent.

This respondent, further answering, says that he does not believe it to be true as charged that any such agreement was ever made between R.

Bowman, W. B. & Jas. D. Partee, as charged in said bill, in regard to the bidding in of said lands ; and this respondent, to the best of his knowledge, information, and belief, says that said charge is entirely false and without any foundation in truth, and is the off-spring of the evil imagination of complainants or their counsel. This respondent says that he denies it to be true that said W. B. & Jas. D. Partee paid the attorney fees of R. Bowman. This respondent denies, as far as he knows or is informed, that said Bowman used any effort to keep said property in the possession of said W. B., Sarah, & J. D. Partee.

This respondent, further answering, says that at the time of the issuance of said writ that, as he is informed & believes, the said Sarah D. Partee and W. B. Partee, either, had any personalty upon which said execution could be levied.

This respondent denies that said R. Bowman acted as attorney of Sarah D. and James D. Partee in any matter connected with said judgment and sale.

This respondent, further answering, says that as to the reliance of said complainants on said trust-deed as charged, and upon said trust-deed he knows nothing of his own knowledge, and if in any manner to be effected thereby demands strict proof.

This respondent, further answering, says that as he is informed and believes the conduct of some of said complainants was very strikingly inconsistent with and contradictory of this charge, as the said Canal Bank, as this respondent is informed, brought suit in the circuit court of Yazoo County on one of the original notes due them, and the said Crescent City Bank also brought on its original notes, and at the time of
109 the date of said receipts by Partee for said notes, as set out in complainants' bill, the said suits were then pending, and were afterwards reduced to judgments.

This respondent, further answering, says that he denies that said Bowman was guilty of any fraud or impropriety of conduct in suing out said execution, but was simply acting in discharge of his duty as an attorney. This respondent, further answering, says that said complainants, neither of them, ever offered to pay his judgment, and he would at any time have willingly and gladly accepted the amount thereof, and have transfer'ed the same to them. This respondent is informed and believes, and so says, that said complainants or their attorneys knew of the existence of said judgment, and of its priority over said alleged trust-deed.

This respondent denies that the debt upon which his judgment is based was provided for in said trust-deed. This respondent says that at the time said trust-deed was made, that his attorney, R. Bowman, as he is informed and believes, refused to include his claim therein.

This respondent, further answering, says that after said trust-deed was executed, this respondent was approached upon the matter of inserting his claim therein, which was referred to his said attorneys, who advised against it, as will more fully appear by a copy of their letter dated Dec. 4th, 1866, and marked as "Exhibit 3," and made part of this answer. This respondent, further answering, says that he admits that said lands in Yazoo were the only property of appreciable value belonging to said Sarah D. Partee, and that lands at the time of said sale were selling at low prices, but this respondent is advised that he was not required to wait until lands appreciated

in value until he should make his judgment. This respondent denies that he is not a bona fide purchaser. This respondent says he knows nothing of said correspondence between complainants' attorneys & R. Bowman, nor of said trust-deeds by James D. Partee, & if to be effected thereby demands strict proof. This respondent denies that he ever sold or transfer'ed said judgment to the Partees, or either of them, but of this cause, and this respondent claims the same benefit thereof as if he had *speedily* pleaded the same.

This respondent, further answering, says that he received a letter from Messrs. Wilkinson & Bowman, dated Dec. 24th, 1867, in which they say:

"We have had execution in your case against Mr. Partee issued & levied. Under a recent act of the legislature he can take the case to the supreme court upon giving bond for costs, or he can enjoin the judgment without bond. He requests us to give him an extension of time within which to pay, say one-half next fall, and the balance in one year. If Mr. Partee will pay we would advise the giving of time, as he can get it on account of the late laws mentioned above, which were recently passed by the legislature as relief measures. Let us hear from you as soon possible."

A copy of said letter is herewith filed as Exhibit No. 1 to this answer.

This respondent, further answering, says that by letter of the 1st of March, 1867, he replied to said letter of Wilkinson & Bowman, referring said extension of the payment of said judgment to them.

A copy of this having fully answered, respondent prays to be hence dismissed with his *cases*, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
Sol's.

110 EXHIBIT 1.

YAZOO CITY, *Feb'y 12th*, 1866.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of 26th January last, inclosing copy of note of Sarah D. Partee for $5,397.87 is received. Mrs. Partee is perfect' good for the money. Messrs. Hogan & Patton, 188 Gravier street, are authorized to receipt in our name for the claim.

Respectf'y, y'r ob't s'v'ts,
(Signed) WILKINSON & BOWMAN.

EXHIBIT.

YAZOO CITY, *July 30th*, 1866.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of a late date to Mr. E. Dunning has been shown us. We cannot advise the acceptance of Mr. Partee's proposition. Your claim is now perfectly secure, & the money will be forthcoming next spring, and it is for you to say what time, if any, you will give him, but we have reason to believe that the lands proposed to be sold to you is almost, if not entirely, unsaleable and worthless.

Y'rs respectf'y,
(Signed) WILKINSON & BOWMAN.

EXHIBIT.

YAZOO CITY, *December 4th*, 1866.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of a late date is received & contents noted. We have nothing to add to what we have already said as to an opinion of the safety of your claims against Partee & wife, except that we expressly refused when we drew the trust-deed from them to include your debt in it, for the reason that yours was already a *lein* and the only *lein* on their property.

Of course, however, if you choose to abate any of your debts against Mr. Partee we can have no objection.

Respectf'y,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS. *Feb'y 24th*, 1867.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: We have had execution in your case against Mr. Partee issued & levied. Under a recent act of the legislature he can take the case to the supreme court upon giving bond for cost, or he can enjoin the judgment without bond. He requests us to give him an extension of time within which to pay, say, one-half next fall and the balance in one year after. If Mr. Partee will pay we would advise the giving of time, as he can get it on account of the late laws mentioned above, which were recently passed by the legislature as relief measures. Let us hear from you as soon as possible.

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

111 YAZOO CITY, MISSISSIPPI,
January 24th, 1868.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: We received a message through Mr. Dremning from you a few days since in relation to your case against Mr. Partee & wife. All of their property, which is very large, is bound for your debt, and it can be made if we are directed to sell. We do not think it will ever be made without. But as we are in doubt as to what arrangements and agreements have been made between Mr. Partee and yourself, we wish express direction from you what to do; and we have to put you on your guard against giving any time for any definete period, as such an agreement would postpone your *lein* to junior judg'ts & thereby loose your debt.

Yours, respectf'y,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Sept. 10th*, 1869.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: On yesterday we had a call from Mr. Ware with a view of buying "Lake Dick." There frequent inquiries for swamp lands and they are coming into demand. We wish to know if the place is for sale, & if so, upon what terms.

Yours, resp'tf'y,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Sept. 12th*, 1869.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: We have recieved your favor of the 10th inst. Immediately after the sale of Partee's lands under your execution, as well as before, we wrote to you, but our letters were returned not delivered. We thought of suing Partee for the rend of Lake Dick, which will test his right to the homestead. We think the place can be sold advantageously this fall or winter. We have had a good many applications for lands, and have advised parties wishing to purchase to examine Lake Dick, stating that we thought you would sell it for the am't of your judgment. There is a decree in favor of the estate of Christopher Todd against Partee & wife, under Mr. Dick's will, which binds the No Mistake lands for about $8,000.00. If the lands are sold under this decree, by bidding over the am't thereof to the amount due you, we think you can make the balance of your money.

Yr's, truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Dec'r 9th*, 1869.

JAMES STEWART, Esq., *New Orleans:*

DEAR SIR: Your favor of 5th inst. received. We have given notice to Partee to deliver up possession of the place on the 1st January next.

Yours, truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *April 21st*, 1870.

JAMES STEWART, Esq., *New Orleans:*

DEAR SIR: Enclosed we send you a bill of complaint, W. B. Partee & others, to be sworn to by you. Let the affidavit be before a commissioner of this State. Mr. A. J. Herd (Commercial Place, we believe, is his place of buisness) is one who understands his buisness very well. When sworn to return to us. We have brought suit for the lands as well as rents. The only contest will be about the homestead. If we succeed, the place will be worth, we think, at least ten thousand dollars.

112

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *June 30th*, 1870.

Mr. JAMES STEWART, *New Orleans:*

DEAR SIR: We herewith enclose you a bond for injunction in the Partee case. Sign it and return to us as early as you can. Mr. Drenning promises to get the sureties on it. We would have sent it before this, but we had no judge to grant the fiat.

Yours, truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Jan'y 21st*, 1871.

JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of late date received. The question of Partee's

homestead exemption will be determined next April. I think from proof already made that his claim cannot be sustained. Will perhaps see you next week in New Orleans.

Y'rs, truly,
(Signed) ROBT BOWMAN.

YAZOO CITY, MISS., *May* 22, 1871.

JAS. STEWART, *New Orleans:*

DEAR SIR: Your favor of the 15th inst. is at hand. The case of yourself against Partee for the homestead on Lake Dick was not tried at the April term of our court, as all the testimony was not in, & Partee's counsel claimed the full time for taking it. I hope we will be able to try it in July next.

Y'rs, truly,
(Signed) R. BOWMAN.

NEW ORLEANS, 26*th Jan.*, 1866.

E. C. WILKINSON, *Yazoo City:*

DEAR SIR: You will find attached a copy of a note of Mrs. Sarah D. Partee for collection, to which I ask your early attention. I will forward the original, if an opportunity offers, or you, perhaps, may find some person coming to the city whom you would authorize to receive & receipt for the same to Richard Nugent & Co., 192 Common street, who have my papers in their possession. Have the goodness to advise me what may be proposed in regard to his debt, as it is not my wish to sue unless forced to do so.

Very resp't,
JAMES STEWART.

113 85,397.87.] NEW ORLEANS, *Dec.* 18*th*, 1861.

Twelve months after date I promise to pay to the order of Richford, Brown & Co., at their counting-house in this city, fifty-three hundred & twenty-seven $\frac{87}{100}$, value received, with eight per cent. per annum interest after maturity until/ paid.

(Signed) SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

EXHIBIT No. 2.

NEW ORLEANS, 15*th Aug.*, 1866.

Messrs. WILKINSON & BOWMAN, *Yazoo City:*

DEAR SIRS: Your esteemed favor of the 30th inst. is at hand, and I particularly note contents. I have to thank you for the prompt manner in which you have attended to my business in the Partee matter, to say nothing of the cheering words you sent me with regards thereto. Mr. Partee called on me some time since and left with me a memorandum of the propositions you now allude to, which I consented to think over, but I never for a moment entertained the idea of accepting such a settlement, and now Mr. Partee must have known that I could not in my condition encumber my-

self with dead weight (which the land would be) when there was the faintest prospect of recovering my money, or at least a considerable portion of it. I entirely concur with your view as to the land he proposes to give to me and unequivocably decline such a settlement. Mr. Partee is well aware that my necessities compel me to collect all the ready money that I can, and as regard set'ling my claim by installment he cannot but understand that they would be placed in such a shape as to insure beyond a peradventure the *mutual* payment thus proposed, & that only after a liberal deduction has been made of the debt in cash at date of settlement.

Very resp'ly,
(Signed) JAS. STEWART.

(Endorsed:) Filed Feb'y 28th, 1874. Geo. T. Swan, clerk.

And afterwards, to wit, on the 20th day of March, 1874, the following replications were filed in the clerk's office of said court, which are in the words & figures following, to wit:

Replication to answer of T. A. Nelson.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK
vs. } 158.
WM B. PARTEE ET AL.

And the said complainant, for replication to the said of T. A. Nelson filed in the above-entitled cause, says that the matters herein contained are vague, uncertain, untrue, and insufficient, and that the allegations in complain't's said bill contained are true, sufficient, & certain; and this they are ready to maintain and prove as the court may direct.

NUGEN & YERGER, *Sol.*

(Endorsed:) Filed March 20th, 1874. Geo. T. Swan, clerk.

114 *Replication to answer of James Stuart.*

In the circuit court U. S., s. dis. Miss. In equity.

CANAL BANK ET. AL.
vs. } 185.
WM. B. PARTEE ET AL.

And the said complain'ts, for replication to the answer filed by James Stuart, say that the matters stated in said cause are uncertain, untrue, and insufficient, and that the allegations in the original bill are true, certain, and sufficient; and this they are ready to maintain & prove as the court shall direct.

NUGENT & YERGER, *Sol's.*

(Endorsed:) Filed M'ch 20th, 1874. Geo. T. Swan, clerk.

In the circuit court U. S., so. dis. Miss. In equity.

Replication to answer of W. B. Partee.

CANAL BANK ET AL. }
vs. } 185.
WM. B. PARTEE ET AL. }

And this said complainants, for replication to the answer of W. B. Partee, say that the matters therein stated are vague, untrue, and insufficient, and that the allegations of their original bill are true, sufficient, and certain; and this they are ready to maintain and prove as the court shall direct.

NUGENT & YERGER, *Sol's.*

(Endorsed:) Filed March 30, 1874. Geo. T. Swan, clerk.

And afterward, to wit, on the 17th day of Oct., A. D. 1874, the amended answer of Robert Bowmman was filed in the clerk's of said court, which, with the exhibits thereto, are in the words & figures following to wit:

(Indorsed:) Filed Oct. 19th, 1874. Geo. T. Swann.

115 185. Equity.

To the honorable the circuit-court judge of the United States for the southern district of Mississippi, in equity setting:

The amended answer of Robert Bowman to a bill of complaint exhibited against himself & others by the Canal Bank & others in this honorable court.

This respondent, saving and reserving, &c., for an amendment to his original answer, says that he was called on by the bill in this cause to file copies of his letters between James Stuart & Wilkinson & Bowman, a law-firm of which this respondent was a member, and this respondent individually, touching a suit in the circuit court of Yazoo County, Mississippi, in which James Stuart was plaintiff and W. B. Partee & Sarah D. Partee, his wife, were defendants.

This respondent says that the said firm of Wilkinson & Bowman's & this respondent kept our copies of the letters to James Stuart on said matter, and at the time of filing his original answer the said Stuart was beyond the United States and resident of Ireland, of the Kingdom of Great Britain, and upon the request of this respondent the said Stuart returned the original letters of Wilkinson & Bowman & of this respondent, copies of which, as well as Stuart's, are herewith filed, marked "Letters, exhibits to amended bill," *to* which are prayed to be made part of this answer.

Respondent prays that this his amended answer be incorporated into & made part of his answer, having fully answered, &c.

ROBERT BOWMAN.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, Henry S. Foote, a United States commissioner at Carelton,

for the district aforesaid, personally appeared Robert Bowman, whose name is signed to the foregoing answer, and upon oath says that the facts set forth therein as of his own knowledge are true, and those state' on the knowledge & information of others he believes to be true.

ROBERT BOWMAN. [SEAL.]

Sworn to & subscribed before me this 4th day Aug., 1874.

H. S. FOOT,
U. S. Commissioner.

EXHIBIT 1.

NEW ORLEANS, *January* 26, 1866.

E. C. WILKINSON,
Yazoo City:

DEAR SIR: You will find attached *of* copy of Mrs. Sarah D. Partee for collection, to which I ask your early attention. I will forward the original if an opportunity offers, or you may find some person coming to the city whom you would authorise to rec*ie*ve and rec*ie*pt for it to Rich'd Nugent & Co., 192 Comon st., who have my papers in their possession. Have the goodness to advise me what may be proposed in regard to this debt, as it is not my wish to sue unless forced so to do *so.*

Very respectfully,

JAMES STUART.

116 $5,397.87.]

NEW ORLEANS, 18 *Dec.*, 1861.

Twelve months after date I pr*i*mise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, fifty-three hundred & seventy-seven $\frac{87}{100}$ dollars, value received, with eight per cent. per annum interest after maturity until/ paid.

(Signed) SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

Copy.

EXHIBIT 2.

NEW ORLEANS, 15*th August*, 1866.

Messrs. WILKINSON & BOWMAN,
Yazoo City:

DEAR SIRS: Your esteemed favor of the 30th ultimo is at hand, and I particularly note contents. I have to thank you for the prompt manner in which you have attended to my bu*i*sness in the Partee matter, to say nothing of the cheering news you send me with regard thereto. Mr. Partee called on me some time since, and left with me a memorandum of the proposition you now al'nde to, which I concented to think on, but I never for a moment entertained the idea of accepting such a settlement, and Mr. Partee must have known that I could not in my condition encumber myself with dead weight (which the land would be to me) when

there was the faintest prospect of recovering my money, or at least a considerable portion of it. I entirely concur with you as to the *loin* he proposes to give, and unequivocally decline such a settlement. Mr. Partee is well aware that my necessitees compel me to collect all the ready money that I can, and as regards set'ling my claim by installment he must understand that they must be placed in such a state as to insure beyond a peradventure the eventual payments thus proposed, and that only after a liberal reduction has been made of the debt in cash at date of settlement.

Very respectfully,
(Signed) JAMES STUART.

EXHIBIT 3D.

NEW ORLEANS, 1*st March*, 1867.

MESSRS. WILKINSON & BOWMAN,
Yazoo City, Missi.:

GENTLEMEN: Your favor of the 24th ult. it at hand and contents particularly noted. As regards to the Partee case, I have little to add to what I have already said in writing & personally to your Mr. Bowman, when in this city; that I want *my* money; that I left the case entirely with you to act as you would for yourselves. I have no confidence whatever in Mr. Partee, and should you conclude to give him the time you mention, I hope by doing so you will not loose any of what you have already gained; but, if possible, make the security still more secure, so that the payments will be promptly met without fail at maturity.

Very respectfully,
(Signed) JAMES STUART.

117 P. S.—In giving Mr. Partee the time you mentioned, it will be well to make him relinquish all claims to those new laws giving him time, as when the payments becomes due he *h*ight bring forward those claims a second time. I tell you again I have no confidence in him. I hope you understand my meaning.

JAMES STUART.

EXHIBIT 4.

NEW ORLEANS, 29 *Oct.*, 1867.

M*i*ssrs. WILKINSON & BOWMAN,
Yazoo City, Missi.:

GENTLEMEN: Not having heard from you since Feb'y last, I feel anxious to know the result of the execution. You then wrote me you had issued & levied. I also notice in a Yazoo paper, J. S. vs. S. D. Partee, the land advertised for sale. At your convenience, I would be glad to hear from you as to the present state of the case, and what are the future prospects. I remain,

Respectfully,

JAMES STUART.

EXHIBIT No. 5.

NEW ORLEANS, 13*th Sept.*, 1869.

Messrs. WILKINSON & BOWMAN,
Attorneys at Law, Yazoo City, Miss.:

GENTLEMEN: Yours of 10th inst. to hand and contents particularly noticed.

The "Lake Dick place," in its present state, is of no use to me. I wrote on same date as yours on the subject of the homestead.

I am ignorant of what land is worth, but like it to net me $10,000, part cash, & part on time made equal to cash; which would not pay me more than the judgment & losses with 8 % per annum interest. Hoping to hear from you soon on the subject,

I remain, very respe'tf'ly,

JAMES STUART.

P. S.—Since writing the above I have had a conversation with a person who says that ten thousand dollars will be no price for that land, but let that go for what it is worth, although he is well acquainted all up the Yazoo. However, make no disposition of it till you write me your views on the matter. You are aware that I know nothing of the value of lands, and would like much you would write me on receipt.

(Sg.) JAMES STUART.

EXHIBIT No. 6.

NEW ORLEANS, *Sept.* 10, 1869.

Messrs. WILKINSON & BOWMAN,
Attorneys at Law, Yazoo City, Miss.:

GENTLEMEN: I believe I have not had the pleasure since January, 1868. Since then you have got judgment and sold out Partee, leaving sum' $3,000 still unpaid. The Lake Dick place bought in for me. Partee claiming the homestead, which, as it were, taking the cream off the place; so, if I had got the improvements, I have no doubt I could 118 have rented it. How Partee can claim this as his homestead I cannot imagine, as this property was bought long after he occupied and live on "No Mistake" plant., which he did up to & during a part of the war, and which was left Mrs. Partee by Mr. James Dick, for which see a copy of Mr. Dick's will, in the hands of Mr. E. Drenning or yourselves. However, as crops are good, and finding you are determined to try the homestead, a case to which, I think, you have every right in law & equity, Partee may buy my judgment if he would, & you think well of it, you might let him have it for its face for cash. In the mean time I think it would be well to finish the whole matter, balance of judgment & homestead, before the crops are gathered.

Very respectfully,

JAMES STUART.

EXHIBIT 7.

NEW ORLEANS, *15th May*, 1871.

ROBERT BOWMAN, Esq.,
Attorney at Law, Yazoo City, Miss.:

DEAR SIR: Your last favor was dated 21st January, in which you say the question of Partee's homestead exemption will be determined next April. Now that April is past and in the middle of May, and not having heard from you, I feel anxious to know the result. Had I the homestead it could probably be rented or sold, as it is a loosing business paying taxes, which are very high, and getting nothing from it. Please write me a few lines on receipt, & ob'ge

Yo'rs, respectf'ly

JAMES STUART.

EXHIBIT 8.

NEW ORLEANS, *6th Dec.*, 1867.

Messrs. WILKINSON & BOWMAN,
Attorneys at Law, Yazoo City, Miss.:

GENTLEMEN: I wrote to you on the 17th Sept., and have heard nothing from you since. From the tenor of your letter of the 13th Sept., I was led to believe you were going to test Partee's right to the homestead, which I hope you have done, as the case stands in a very unsatisfactory attitude there. In the event of having a favorable offer to purchase, I could not avail myself of it as long as the homestead question is unsettled.

I respectfully, but particularly, request to have the matters tested, if you have not already done so.

And I remain, very resp'tf'ly,

JAMES STUART.

EXHIBIT 9.

NEW ORLEANS, *Sept. 17th*, 1869.

Messrs. WILKINSON & BOWMAN,
Yazoo City, Missi.:

GENTLEMEN: You's of the 13th inst. is to hand & contents noted. I did think it strange after the battle was fought that I did not hear from you, but having unlimited confidence in you I scarcely gave it a thought, and am pleased now that you wrote me, although I did not recieve
119 your letter. It was no fault of mine, as I gave you my address in my letter of 28th January, if not previous; but all is well that ends well. As regards my offering or making any suggestion as what would be best to do I am ut'*ter*ly at a loss.

You commenced the case, you brought it to a point satisfactory to me, and I think the best thing I can say, after perhaps saying too much to be of any use, is for you to go ahead and work for me as it were for yourselves; I ask no more. I will be satisfied, and still more so if you gain the homestead & the balance of my debt.

Yours, respectfully,

JAMES STUART.

EXHIBIT No. 10.

NEW ORLEANS, 14 *January*, 1871.

Messrs. WILKINSON & BOWMAN,
Attorneys at Law, Yazoo City, Miss.:

DEAR SIRS: Not having heard from you since I wrote you in June last, am, of course, anxious to know if any progress has be'n made with the Partee matters, as it is very important that it should be decided before the time to plant next year's crops; but I know we must wait for the law to take its course. I should be glad to put it to some use, & not having it lying idle; perhaps you could advise me if anything can be done to make it pay som'thing.

Very resp'tf'ly

JAMES STUART.

EXHIBIT 11.

YAZOO CITY, *Feb'y 12th*, 1866.

Mr. JAMES STUART, *New Orleans:*

DEAR SIR: Your favor of 26th January last, including copy of note of Sarah D. Partee for 85,397.78, is received. Mrs. Partee is perfectly good for the money. Mess. Hogan & Patton, 188 Gravier street, are authorised to receipt in our name for the claim.

Resp'tf'ly, y'r ob'ts s'v'ts,

(Signed) WILKINSON & BOWMAN.

EXHIBIT 12.

YAZOO CITY, *July 30th*, 1860.

Mr. JAMES STUART, *New Orleans:*

DEAR SIR: Your favor of a late date to Mr. E. Drenning has been shown us. We cannot advise the acceptance of Mr. Partee's proposition. Your claim is now perfectly secure, and the money will be forthcoming next spring, and it is for you to say what time, if any, you will give him; but we have reason to believe that the land proposed to be sold to you is almost, if not entirely, unsaleable and worthless.

You's, resp'tf'y,

(Signed) WILKINSON & BOWMAN.

120 EXHIB. 13.

YAZOO CITY, *Dec. 4th*, 1866.

Mr. JAMES STUART, *New Orleans:*

DEAR SIR: Your favor of a late date is recieved and contents noted. We have nothing to add to what we have already said as to our opinion of the saf'ty of your claim against Partee & wife, except that we expressly refused when we drew the deed trust from them to include your debt in it, for the reason that yours was already a *lein* & the only *lein* on their property. Of course, however, if you choose to abate any of your debts against Mr. Partee we can have no objection.

Respectf'ly,

(Signed) WILKINSON & BOWMAN.

EXHIBIT 14.

YAZOO CITY, MISS., *Feb'y 24th*, 1867.

Mr. JAMES STUART, *New Orleans:*

DEAR SIR: We have had execution in your case against Mr. Parte issued & levied. Under a recent act of the legislature he can take the case to the Supreme Court, upon giving bond for the costs, or he can enjoin the judgment without bond. He requests us to give him an extension of time within which to pay, say, one-half next fall, and the balance in one year after. If Mr. Parte will pay we would advise the giving of time, as he can get it on account of the late laws mentioned above, which were recently passed by the legislature as relief measures. Let us hear from you as soon as possible.

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

EXHIBIT 15.

YAZOO CITY, MISS., *January 24th*, 1868.

Mr. JAMES STUART, *New Orleans:*

DEAR SIR: We recieved a message through Mr. Drenning from you a few days since, in relation to your case against Mr. Partee & wife. All of their property, which is very large, is bound for your debt, and it can be made if we are directed to sell. We do not think it will ever be made without, but as we are in doubt as to what arrangement & agreement have been made between Mr. Partee & yourself, we wish express direction from you what to do, and we have to put you on your guard against giving any time for any definate period, as such an agreement would postpone your lein to junior judgment, & thereby loose your debt.

Y'rs resp'tf"ly,
(Signed) WILKINSON & BOWMAN.

EX. 16.

YAZOO CITY, MISS., *Sept. 10th*, 1869.

Mr. JAMES STUART, *New Orleans:*

DEAR SIR: On yesterday we had a call from Mr. Ware, of
121 Vicksburg, with a view of buying Lake Dick. There are frequent inquiries for swamp lands, and they are coming into demand. We wish to know if the place is for sale, & if so, upon what terms.

Yours respectf"ly,
(Signed) WILKINSON & BOWMAN.

EX. 17.

YAZOO CITY, MISS., *Sept. 13th*, 1869.

Mr. JAMES STUART,
New Orleans:

DR SIR: We have recieved your favor of the 10th inst. Immediately after the sale of Partee's land under your execution, as well as before, we

wrote to you, but our letters were returned not delivered. We though' of suing Partee for the rent of "Lake Dick," which will test his right to the homestead. We think the place can be sold advantageously this fall or winter. We have a good many ap'lications for lands and have advised parties wishing to purchase to examine "Lake Dick," stating that we thought you would sell it for the amount of your judgment. There is a decree in favor of the estate of Christopher Tood against Partee & wife under Mr. Dick's will, which binds the "No Mistake" lands for about $8,000. If the lands are sold under this decree, by bidding over the amount thereof to the amount due you we think you can make the balance of your money.

Yo'rs, truly,
(Signed) WILKINSON & BOWMAN.

EX. 18.

YAZOO CITY, MISS., *Dec. 9th*, 1869.

JAMES STUART, Esq.,
New Orleans:

DEAR SIR: Your favor of the 5th inst. rec*e*ived. We have given notice to Partee to deliver up possession of the place on the 1st January next.

Yours, truly,
(Signed) WILKINSON & BOWMAN.

EX. 19.

YAZOO CITY, MISS., *April 21st*, 1870.

JAMES STUART, Esq.,
New Orleans:

DEAR SIR: Enclosed we send you a bill of complaint against W. B. Partee & others to be sworn to by you. Let the affidavit be before a commissioner of the State. Mr. A. J. Herd (Commercial Place, we believe is his place of business) is one who understands his business very well. When sworn to, return to us. We have brought suit for the lands as well as rents. The only contest will be about the homestead. If we succeed, the place will be worth, we think, at least ten thousand dollars.

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

122 EX. 20.

YAZOO CITY, MISS., *June 30th*, 1870.

Mr. JAMES STUART,
New Orleans:

DEAR SIR: We herewith enclose you a bond for injunction in the Partee case. Sign it & return to us as early as you can. Mr. Drenning promises to get the sureties on it. We would have sent it before this, but we had no judge to grant the fiat.

Yours, truly,
(Signed) WILKINSON & BOWMAN.

Ex. 21.

YAZOO CITY, MISS., *Jan'y 21st*, '71.

JAMES STUART,
New Orleans:

DEAR SIR: Your favor of late date recieved. The question of Partee's homestead exemption will be determined next April. I think from proof already made that his claim cannot be sustained. Will perhaps see you next week in New Orleans.

Yours, truly,
(Signed) ROBT BOWMAN.

Ex. 22.

YAZOO CITY, MISS., *May 22nd*, 1871.

JAS. STUART,
New Orleans:

DEAR SIR: Your favor of the 25 inst. is at hand. The case of yourself against Partee for the homestead on "Lake Dick" was not tried at the April term of our court, as all the testimony was not in, & Partee's counsel claimed the full time for taking it. I hope we will be able to try it in July next.

Yours, truly,
(Signed) R. BOWMAN.

And afterwards, to wit, on the 3rd day of February, A. D. 1875, being a day in a special January term, A. D. 1875, of said court, a pro confesso was rendered against Sarah D. Partee, which is in the words and figures following, to wit:

In the circuit court of the United States for the southern district of Mississippi, special January term, A. D. 1875, February 3rd, A. D. 1875.

Before the honorable R. A. Hill, district judge, present and presiding.

CANAL BANK OF LOUISIANA & AL. *vs.* WM. B. PARTEE ET AL. } N. S. 185. In equity.

Sarah D. Partee having entered her appearance herein and failed to plead, answer, or demur to the complainants' bill, it is, therefore, on motion of complainants' solicitors, ordered, adjudged, and decreed that the several allegations of complainants' bill be taken for confessed as to the said Sarah D. Partee.

And afterwards, to wit, on the 10th day of February, A. D. 1875, being a day in said special term aforesaid of said court, a final decree was rendered in said cause, which is in the words and figures following, to wit:

123 In the circuit court of the United States for the southern district of Mississippi. Special January term, A. D. 1875, February 10th, A. D. 1875.

Before the honorable R. A. Hill, district judge, present and presiding.

CANAL BANK ET AL.
vs.
WILLIAM B. PARTEE ET AL. } No. S. 185. In equity.

Be it remembered that this cause came on this day to be heard upon the bill, pro confesso, answers, exhibits, and proofs, and the court being thereof sufficiently advised, and being satisfied that the complainants are not entitled to the relief sought, doth order, adjudge, and decree that the complainants' bill be dismissed at their cost to be taxed, for which execution may issue.

And the complainants having in open court prayed an appeal from this decree to the Supreme Court of the United States, it is further ordered, adjudged, and decreed that the same be and is hereby granted upon their entering into bond in the penalty of five hundred dollars, with security to be approved by the clerk of this court, and conditioned according to law.

Ordered, adjudged, and decreed this 10th day of February, A. D. 1875.

R. A. HILL, *Judge*.

And afterwards, to wit, on the 24th day of December, A. D. 1875, an appeal bond was filed in the clerk's office of said court, which, with the endorsement thereon, is in the words and figures following, to wit:

Know all men by these presents that we, The Canal Bank, The Crescent City Bank, The Union Bank, The Louisiana State Bank, I. Marsh Denman, and A. Bedault as principals, and William L. Nugent and Thomas A. McWillie as securities, are held and firmly bound unto William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Thomas A. Nelson, James Stewart, and Fountain Barksdale in the penal sum of five hundred dollars, to the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 21st day of December, A. D. 1875.

The condition of this obligation is such that whereas the above bound principals in this bond have prayed and obtained an appeal from the final decree of the circuit court of the United States for the southern district of Mississippi, in equity, rendered on the 10th day of February, A. D. 1875, in a certain cause therein pending, wherein the said Canal Bank and others were complainants, and the said William B. Partee and others were defendants, number 185, whereby their bill was dismissed at their costs to be taxed, to the Supreme Court of the United States:

Now, therefore, if the said Canal Bank, Crescent City Bank, Union Bank, Louisiana State Bank, I. Marsh Denman, and A. Bedault, shall prosecute their said appeal to effect and answer all costs and dam-
124 ages if they shall fail to make good their plea, then this obliga-

tion shall be void and of no effect; otherwise to remain in full force and virtue.

CANAL BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
CRESCENT CITY BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
UNION BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
LOUISIANA STATE BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
I. MARSH DENMAN. [SEAL.]
A. BEBAULT, [SEAL.]
By att'y, W. L. NUGENT.
WM. L. NUGENT. [SEAL.]
THOS. A. McWILLIE. [SEAL.]

Sealed and delivered in presence of and approved by me this 24th December, 1875.

GEO. T. SWANN, *C'erk.*

(Endorsed:) Filed and approved by clerk this 24th Dec'r, 1875. Geo. T. Swann, clerk.

And afterwards, to wit, on the 17th day of April, A. D. 1876, the following citation was issued in said cause, to wit:

In the circuit court of the United States for the southern district of Mississippi, in equity.

CANAL BANK ET ALS., APPELLANTS,
vs.
WM. B. PARTEE, JAMES D. PARTEE, ROBERT Bowman, James Stewart, Fountain Barksdale, trustee, & Thomas A. Nelson & others, appellees. } N. S. 185.

To Wm. B. Partee, James D. Partee, Robert Bowman, Thomas A. Nelson, James Stewart, Fountain Barksdale, trustee, & others, or their att'y of record, J. A. P. Campbell, esq.:

Whereas the Canal Bank of New Orleans, La., and others, complainants in the above-entitled cause, have lately appealed to the Supreme Court of the United States from a decree lately made in the circuit court of the United States for the southern district of Mississippi, in
125 equity, made in favor of you, the said Wm. B. Partee, James D. Partee, Robert Bowman, James Stewart, Fountain Barksdale, trustee, Thomas A. Nelson, and Nelson, Lamphier & Co., and has filed the security required by law, you are therefore cited to appear before the said Supreme Court at the city of Washington, on the third Monday of October, A. D. 1876, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Oxford, in the northern district of

Mississippi, in the 5th circuit, the 17' day of April, in the year of our Lord one thousand eight hundred and seventy-six.

R. A. HILL,

District Judge of the United States for the Southern District of Mississippi, and Presid'g Judge of the Circuit Court of the United States for s'd Southern District.

UNITED STATES OF AMERICA,
So. Dis. Miss.:

Personally appeared before me, clerk of the circuit court of the United States for s'd southern district of Mississippi, W. L. Nugent, solicitor for the appellants, who, being duly sworn, says that on this the 24th day of April, A. D. 1876, he delivered a true copy of the foregoing citation in appeal to J. A. P. Campbell, esq., solicitor for the appellees therein named, and executed the same personally upon him.

W. L. NUGENT, *Sol.*

Sworn to and subscribed before me this 24th April, A. D. 1876.
GEO. T. SWANN, *Clk.*

And on the 8th day of May, 1879, the mandate of the Supreme Court of the United States was filed in said cause, and is in the words & figures following, to wit:

125½ UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Whereas lately, in the circuit court of the United States for the southern district of Mississippi, before you or some of you, in a cause between The Canal Bank of Louisiana, The Crescent City Bank, The Union Bank, The Louisiana State Bank, J. Marsh Denman, and A. Bidault, complainants, and William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Thomas A. Nelson, James Stewart, and Fountain Barksdale, trustee for Nelson, Lamphier & Company, defendants, wherein the decree of the said circuit court entered in said cause on the 10th day of February, A. D. 1875, is in the following words, viz:

126 Be it remembered that this cause came on this day to be heard upon the bill, pro confesso, answers, exhibits, and proofs, and the court being thereof sufficiently advised, and being satisfied that the complainants are not entitled to the relief sought, doth order, adjudge, and decree that the complainants' bill be dismissed at their cost, to be taxed, for which execution may issue.

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-eight, the said cause came on to be heard before the said Supreme Court on the said transcript of record,

and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the
127 said circuit court in this cause be, & the same is hereby, reversed with costs; and that the said complainants recover against the said defendants, William B. Partee et al., three hundred & twenty-two dollars & eighteen cents, for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein, in conformity with the opinion of this court.

7TH APRIL, 1879.

You therefore are hereby commanded that such execution & further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

128 Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the fifth day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

D. W. MIDDLETON,
Clerk Supreme Court United States.

And on the 27th day of May complainants file' their supplemental bill herein, which is in the words & figures following, to wit:

129 To the hon. the judge of the circuit court of the U. S. for the southern district of Mississippi, in equity.

THE CANAL BANK & OTHERS } N. S. 185
vs.
WILLIAM B. PARTEE & OTHERS. }

The complainant' in the above-entitled suit, suing on behalf of themselves and others, &c., bring this their bill of revivor & supplement against E. Drenning, as executor of the last will and testament of James Stewart or Stuart, deceased, and administrator of the goods, chattels, &c., of Christopher Todd, deceased, Robert E. Hudson, O. H. McCall, Isaac Brown, and H. Spigert, citizens of said southern district, resident in Yazoo County; Jacob Schlenker, G. Hain, and E. Bruscner, citizens of said State, resident in Warren County, and merchants under the firm-name & style of Jacob Schlenker & Co.; Joseph P. Benson and Charles C. Ewing, individually and as administrator of S. S. Ewing, deceased, citizens of said State, resident in Monroe County, northern district; and thereupon your orators, complaining, state and show unto your honor as follows:

130 On the 1st day of April, A. D. 1873, your orator' exhibited their bill of complaint in the said circuit court against William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Thomas A. Nelson, James Stewart, & Fountain Barksdale, as trustee for Nelson, Lamphier & Co., for relief and decree touching the matters complained of, in which bill, among other things, your orators stated that on the 19th November, 1866, the said Sarah D. Partee and William B. Partee, her husband, being justly indebted and truly indebted to them and others upon contracts made anterior to the late rebellion, which were valid, legal, and binding, in the

amounts stated, made their sundry notes as set out in said bill, and delivered the same to your orators. That to secure payment of said notes the said Partee and wife made, executed, and delivered to your orators their certain deed of trust of that date, duly stamped, acknowledged, and recorded there, wherein they conveyed to one Robert Bowman, upon
131 the conditions stated in said deed, among other lands the following in Yazoo County, Missi-sippi: Lots 3, 4, 5, 6, 7, & 8, and 28¼ acres in lot one, section five, all of section six, northeast quarter section eight, south half section nine, northeast quarter and south half northwest quarter section ten, east half of northwest quarter section eleven, all of section fourteen, west half of northeast quarter, northwest quarter & south half of section eleven, north half & east half of southeast quarter section fifteen, north half and southeast quarter section twenty-three, west half of section twenty-four, township nine, range four west; also the north section one, northwest quarter section two, northeast quarter section three, township nine, range five west; lot seven, section thirty-one, lot seven, section thirty-two, township ten, range four west; lot six, section thirty-four, lot seven, section thirty-five, lots four and five, section thirty-six, township ten, range five west; northeast quarter and east half of the northwest
132 quarter section eleven, west half of west half section one, east half of southwest quarter section two, township twelve, range four west, together with all the mules, horses, cattle, farming implements, &c., belonging to said Partee & wife, said lands lying, being, & situate in the said county of Yazoo, and constituting what are known as the "No Mistake," "Tyrol," "Seven Gums," and "Lake Dick" plantations.

That on the 6th June, 1866, the defendant, James Stewart, recovered judgment by default against the said Sarah D. Partee for $6,994.86, which was attacked as being void upon and for the reasons set out in said bill. That under said void judgment the said lands and plantations had been sold and purchased by the said James Stewart and his codefendant, James D. Partee, the son of said Sarah D. Partee. That said James D. Partee had mortgaged the lands so purchased to Nelson, Lamphier & Co.,
133 said Barksdale being trustee. That said mortgage had been foreclosed and said Thomas A. Nelson had become purchaser, &c., &c., for a full detail of which, and all other allegations thereof, reference is here made to the said original bill, which, with said trust-deed, is made part of this for the purposes hereafter indicated.

On the 30th April, 1873, the defendant Robert Bowman filed his answer to said bill; on the 30th July, 1873, the defendant Fountain Barksdale filed his answer; on the first of August, 1873, the defendant James D. Partee filed his answer to said bill; on the 30th Jan'y, 1874, the defendants, William B. Partee, Sarah D. Partee, Thomas A. Nelson, and James Stuart, entered their appearance in said cause; on the 11th Feb'y, 1874, said Nelson filed his answer; on the 27th Feb'y, 1874, said W. B. Partee filed his answer; on the 28th Feb'y, 1874, said James Stuart filed his answer; and on the 3rd Feb'y, 1875, pro confesso was entered
134 against the said Sarah D. Partee; on the 10th Feb'y, 1875, there was a decree entered against your orators dismissing their bill and granting them an appeal on their entering into bond and to be app'l'n's, &c.

On the 24th Dec., 1875, their appeal bond was filed as required by said

order; and on the 9th April, 1879, the decree of the said circuit court was reversed by the Supreme Court of the United States, the said judgment in favor of said Stewart declared void, said trust-deed was declared valid, and the mandate has been duly filed in said circuit court.

By way of supplement, and for purposes of revivor, your orator states as follows: On the day of , 1876, pending said appeal, the defendant James Stewart departed this life, having previously made his last will and testament, whereby, after making sundry specific devises, he constituted Edward Dunning, of Yazoo City, his sole executor to carry his will into effect, and make sale of his real estate. On the
135 9th day of June, 1876, the said Edward Dunning qualified as executor of said will. Copies of said will and letters testamentary are herewith filed, marked Exhibits "A²" & "B²," and the same are prayed to be held and taken as part of this bill. After the filing of his answer in this cause, to wit, on the 25th August, A. D., 1875, the said defendant, James Stewart sold and conveyed to O. H. McCall and James S. Cronch, the lands purchased by him at execution sale, as stated in said original bill, to wit:

Lots 3, 4, 5, 6, 7, 8, & 28, & lot 1, sec.	5,	town.	9,	range 4 west.
All..	" 6,	"	"	"
N.E. ¼	" 8,	"	"	"
N. ½	" 1,	town.	9,	range 5 west.
N.W. ¼	" 2,	"	"	"
N.E. ¼	" 3,	"	"	"
Lot 7	" 31,	town.	10,	range 4 west.
" 7	" 32,	"	"	"
" 6	" 34,	town.	10,	range 5 west.
" 7	" 35,	"	"	"
" 5	" 36,	"	"	"

Constituting what are now called the "Lake Dick" and "Mound"
136 plantation, and the 18th day of Feb'y, 1878, the said Cronch sold and conveyed his interest in said lands and plantations to said McCall, all of which appears from copies of said conveyance herewith filed as parts of their bill, marked Exhibits "C²" & "D²." Until the said sale of August 25, 1875, the said James Stewart was in possession of said lands, enjoying and using the rents, issues, and profits thereof. Since said sale, the said O. H. McCall has used and occupied the same. The reasonable rental value of said values during each year since the institution of complainants' original bill would be not less than three thousand dollars per annum. On the 4th day December, 1878, the said McCall sold and conveyed to the defendant Robert G. Hudson, one acre of land in lot one, section 5, township 9, range 4 west, for two hundred and fifty dollars, as appears from his deed, copy whereof is herewith, filed marked "Exhibit E²," and prayed to be taken as part of this bill. On the 25th day of
137 August, 1875, the said McCall and Cronch made a conveyance of said lands to said Dunning in trust to secure the purchase-money thereof to said Stewart. On the 27th June, 1878, the said McCall conveyed the same to Isaace Broom as trustee, to secure a debt to Jacob Shlenker, G. Hain, and E. Brunner, merchants, under the name and style of Jacob Shlenker & Co.; and on 29th Jan'y, 1879, to H. Spriget, trustee,

to secure a debt to said Jacob Shlenker & Co.; copies of said deeds *and* herewith filed, marked Exhibits "F²," "G²," "H²."

Your orators' original bill was filed April 1st, 1873, and subpœna thereon was issued on the same day. It was not executed upon the defendant Thomas A. Nelson, because of his absence from the State, but was *sued* on the defendants Boerman Barksdale *plea* to the 10th day of April, 1873.

On the 15th day of April, 1873, the said Nelson conveyed to Robert H. Short, trustee, to secure Nelson, Lamphier & Co. in the payment of $35,000, as evidenced by sundry notes set out in said conveyance—the lands purchased by him, as set out in said original bill, under a
138 trust-deed executed by James D. Partee, who became the purchaser thereof, under the execution sale, upon the judgment rendered in favor of said James Stewart against said Sarah D. Partee which was directly attacked by your orators in their said original bill. Said trust-deed was acknowledged April 15 & 16, 1873, before persons not authorized by law to take acknowledgments, and was filed for record May 3, 1873. If said trust-deed were properly acknowledged it is nevertheless inoperative, and of no effect as against your orators. The lands included in said deed are as follows:

S. ½	sec. 9,	town. 9,	range 4	west.		
NE. ¼ & S. ½ NW. ¼ & S. ½	" 10,	"	"	"	"	"
W. ½ NE. ¼ & NW. ¼ & S. ½	" 11,	"	"	"	"	"
All	" 14,	"	"	"	"	"
N. ½ & E. ½ SE. ¼	" 15,	"	"	"	"	"
N. ½ & SE. ¼	" 23,	"	"	"	"	"
W. ½	" 24,	"	"	"	"	"

And by said deed, with said lands, were conveyed all the improvements, consisting of quarters, store-house, mechanics' shops, barns, stables,
139 and other buildings, as well as gin-house, gin-stand, steam-engine, and said mill, and also the wagons, carts, harness, plantation implements, and about fifty mules and three horses, all of which said mules, horses, wagons, &c., were included in your orators' deed of November 19, 1866. The crops of corn and cotton were also pledged and hypothecated.

Among the notes secured by said trust-deed were several which came into the hands of Joseph P. Benson and Charles C. Ewing, administrator of the estate of S. S. Ewing, who, with sundry other holders of similar notes, on the 1st Aug., 1876, exhibited their bill in the chancery court of Yazoo County against the said Nelson, Lampier & Co., Mary Nonay, Chaffe Brother & Son, Robert H. Short, Jesse K. Bell, and E. I. Beering, for a foreclosure thereof. Such proceedings were thereon had that a receiver was appointed, a final decree passed, the said lands were sold, & purchased under the sale made by the commissioner by the defendants, Benson, Ewing, & Hudson, on the 19th Feb'y, 1877, with full notice
140 of your orators' rights. The mules and personalty were also sold. The rents were collected by the receiver, and $294.84 were applied to the payment of the taxes due on said lands on the 22 December, 1876, and $33.73 to the damages, under the order of the court (52). Your ora-

tors were not parties to said proceedings, and herewith filed a transcript of the record thereof, marked "Exhibit J²," and praying that the same may be considered as part of this bill.

The said last-mentioned cause was conducted by Mess. Hudson & Hudson, att'ys. On the *then* day of Jan'y said last-mentioned lands were sold by H. L. Taylor, the tax-collector of said county of Yazoo, for taxes assessed to the owner thereof for the year 1875, though there was no name placed on the assessment thereof when the defendants, Benson and Ewing, through the said Hudson & Hudson, became the purchasers thereof, at the sum of $383.47, and received a deed therefor from tax-collector,
141 which was acknowledged Jan'y 17th, 1876, and filed for record December 9, 1878. A copy of said deed is herewith filed, as Exhibit K², and is prayed to be taken as part of this bill.

On the 3rd day of July, 1877, the said Joseph P. Benson sold and conveyed all his interest in said lands so purchased as aforesaid, to the defendants, Charles C. Ewing and Robert G. Hudson, by deed of quit-claim, a copy of which is herewith filed as Exhibit L², and prayed to be taken as a part of this bill.

On the 7th July, 1875, the assessment rolls of said county of Yazoo ware taken up for examination; on the 8th day of July the examination thereof was resumed; on the 9th July it was continued, and on the 10th July, 1875, the real and personal rolls were received and approved. On the same day, to wit, the 10th day of July, 1875, the same being Saturday of the week, the board of supervisors of said county levied a tax of five mills on the dollar of the assessed value of all property liable to
142 taxation for general county purposes, and one and a quarter mills on the dollar of the assessed value of said property judiciary purposes, and two mills on the dollar of the assessed value of said property as a special tax for court-house and jail purposes, and four mills on the dollar of the assessed value of said property as teachers' fund, and a half mill for school-house and contingent fund, for all which taxes said lands were sold, as well as for the State tax. A copy of the minutes of said board, showing said facts, is herewith filed as Exhibit M², and is prayed to be taken as part of this bill. The taxes therefore levied by said board on the said 10th day of July, 1875, are as follows: For general county purposes, five mills on the $; for judiciary purposes, one & a quarter mills on the $; for special tax, two mills on the dollar; for teachers' fund, four mills on the dollar; for school-house & contingent, a half mill on the dollar, making a total of 12¾ mills.

On Monday, the fifth day of July, 1875, the assessment rolls were
143 filed by the ass*ission* of said county of Yazoo, T. D. Morrow, said assessor, making oath that the same was a true and correct assessment of all the real estate in said county. Copies of said assessment & affidavit are herewith filed, marked Exhibits "N²" & "O²."

On said last-named exhibits and the land applicable your orators charge that the said pretended tax sale by said Taylor to said Benson & Ewing was and is wholly void, and the deed executed by him a nullity, for the following reasons:

1st. Because by the act of March 6th, 1875, entitled "An act to amend sections 1684 & 1685 of the revised code of 1871, in relation to the return of assessment rolls," the assessor of said county was required, on or before

the first day of June, 1875, and annually thereafter, to return the assessment books to the clerks of the board of supervisors, verified by affidavit as required by law; and that was not done in this case until the 5th day of July, 1875.

144 2nd. Because the said assessment-roll was not verified in the manner required by code, section 1684.

3rd. Because the said assessment did not remain on file prior to its examination one month, as required by the said act and code, section 1684.

4th. Because the county taxes were not levied on the first Monday in July, as required by code, section 1392, and the laws of the State.

5th. Because the tax levied by said board with the State and school taxes exceeded twenty dollars on the $1,000 valuation, and the limit allowed by law. The limit for school-teachers, tax was three mills. (Acts 1875, '60.)

But if this were not so, the said Benson & Ewing were the holders of two of said notes, secured by the mortgage executed by Thomas A. Nelson, a party to the original bill in the cause, at the time of their tax purchase, and could not, as your orators are advised and charge the law to be, buy up a tax title to the exclusion of prior or concurrent

145 mortgages, but could only in equity claim a reimbursement of the money expended to protect the mortgages. In fact said tax title was purchased by them only for the purpose of preserving the mortgaged property; and in the very suit instituted by them for foreclosure of their said mortgage under the order appointing a receiver, provision was made for the payment of taxes upon said lands. In said proceeding no reference whatever was made to any claim or pretended claim of title under said tax deed, and your orators are advised that no such claim can be made as against them.

Anterior to March 22, 1849, one James Dick, the uncle of the said Sarah D. Partee, departed this life in the said county of Yazoo, having previously made his last will and testament, then duly probated and admitted to record, in and by which, after other provisions, the said testator devised and bequeathed to his niece, the said Sarah D. Partee, who

146 was the daughter of Christopher Todd and Sarah Todd, and had intermarried with Wm. B. Partee long prior to the probate of said will—

1st. His plantation, commonly called "No Mistake" plantation, near Sactartia, Yazoo County, State of Mississippi, with all the negroes, horses, mules, cattle, buildings, and farming utensils that may be found on said estate at the time of his death and belonging to him.

Following the said devise there was another in the words & figures following, to wit:

2nd. I give and bequeath to the said Sarah D. Todd, and to her heirs, about six thousand acres of land situated in this State, and entered by E. Lawrence and Brashan in my name. And immediately succeeding the said bequest, the said will of said James Dick contains the following: "This bequest is made to Sarah Todd, wife of William B. Partee, upon the following conditions, under the penalty in case of non-compliance of

147 loss of all the above property: The first of said conditions is that the said Sarah D. Todd, wife of the said William B. Partee, shall,

within the next ensuing months after my death, pay to Elezabeth Calhoun, of Monroe County, State of Tennessee, and to Nathaniel Calhoun, and to Christopher Calhoun, his brothers, children of Margaret Todd, wife of Charles Calhoun, and residing in Muncy County, Tennessee, the sum to each of twelve thousand dollars; that is to say to Miss Elizabeth Calhoun the sum of twelve thousand dollars; to Nathaniel Calhoun, twelve thousand dollars, and to Christopher Calhoun, twelve thousand dollars, and in case of the death of either or of any of them without issue, then the sum or sums coming to said deceased parties, or their heirs, to be given to the survivor or survivors in equal proportions.

"The second of said conditions is that the said Sarah D. Todd and her heirs shall pay to Christopher Todd and to Sarah, his wife, my
148 sister, one thousand dollars per annum during the life of either, payable as they or the survivor may require it."

A copy of the said provisions of said will is herewith filed, marked "Exhibit P[2]," and is prayed to be taken as part of this bill. The lands then constituting said plantation are not known, and a schedule thereof will hereafter be filed when the same are ascertained.

On the face of said wi[l] your orators are advised, believe, & charge as follows:

1st. That the legacy to the said Christopher Todd and wife, who was the father and mother of the said Sarah D. Partee, was not a charge upon the said "No Mistake" plantation, and the negroes, mules, &c., thereon; and if a charge on the wild lands devised to the said Sarah D. Partee, which they deny on advice, it could only be exacted, or have been exacted, by the annuitants themselves during their natural lives.

2nd. That the said annuity and the right to exact any supposed
149 arrearages thereof expired with the lives of the said annuitants.

3rd. That it constituted only a personal claim against the said Sarah D. Partee, to be enforced by proper proceedings to have the estate devised forfeited, because of a breach of the conditions attached thereto, and to the enjoyment thereof by the said will.

4th. That before anything became payable to the said annuitants at all, it was necessary that the same should be required by them or the survivor.

5. That the said annuity only became payable as required by the said annuitants or the survivors of them, and in the sum required; it was not an absolute but a conditional annuity.

Sarah Todd died prior to her husband, and during the lives of both, and of the survivors, all sums required by them or either of them under said will were promptly paid by the said devisee, Sarah D. Partee,
150 and at the death of the survivor no money actually required by him remained in arrears and unpaid. Notwithstanding which, after the death of said Christopher Todd, one Edward Drenning, as his administrator, some time in the latter part of 1867, pretending that there was a balance of annuity due his intestate, computing the account at the rate of $1,000 per annum, whether required or not, commenced proceedings in the chancery court of Yazoo County against Sarah D. Partee and William B. Partee, sole defendants, to have said balance decreed to be a lien and charge upon the said "No Mistake" plantation.

Your orators not being parties, nor their trustee, Robert Bowman, the said Partee & wife did not answer; a pro confesso decree was entered

against them on the 8th June, 1868, adjudging that there was due by said defendants to said Todd, under said will, the sum of seven thousand six hundred and eighty dollars, and that the same was a lien & charge
151 upon all the lands devised by said will to said Sarah D. Partee, known as "No Mistake" plantation, &c., and that unless paid in thirty days, the said plantation should be sold. The files in said cause have been lost, but a copy of the decree therein is herewith filed as Exhibit Y^2, & asked to be held and considered as part of this bill. On the 15 April, 1878, nearly ten years after the rendition of said decree, under and by virtue thereof, H. L. Taylor, sheriff of said county, sold the following lands, as composing said "No Mistake" plantation, to wit: S. $\frac{1}{2}$ sec. 9; NE. $\frac{1}{4}$ & S. $\frac{1}{2}$ NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 10; W. $\frac{1}{2}$ NE. $\frac{1}{4}$ & NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ & E. $\frac{1}{2}$ SE. $\frac{1}{4}$ sec. 15; N. $\frac{1}{2}$ & SE. $\frac{1}{4}$ sec. 23, and W. $\frac{1}{2}$ sec. 24, all in township 9, range 4 west, for 8293, and Robert E. Hudson & Charles C. Ewing became the purchasers.

A copy of their deed is herewith filed as Exhibit R^2, and prayed to be taken as part of this bill. It was acknowledged December 2d, 1878, but whether the sale was ever confirmed or not your orators do not
152 know, and pray discovery thereof. Long prior to the said sale said Hudson & Ewing had purchased for a nominal sum the said decree and taken an assignment thereof from said Drenning, administrator of said Todd. The greater part of said decree had been previously paid off by the said Sarah D. Partee and James D. Partee, and the said decree did not specify any particular lands as constituting the said "No Mistake" plantation, nor fix a lien upon any designated lands. The suit was not defended at all, and your orators are advised & charge that, as entered, the said decree was not capable of enforcement, and the sale of any particular lands under the same void. The said Benson, Ewing & Hudson had been in possession of the lands sold under the said decree and since their purchase thereof under said first mentioned decree on the 19th Feb'y, 1877, and had enjoyed the rents, issues, and profits thereof to an amount more than equal to that paid by them to said Drenning for said de-
153 cree, and more than was actually due thereon. The said decree in favor of said Drenning, as administrator of said Todd, was barred by the statute of limitations, levied prior to the sale made by said Tyler, of said lands thereunder, and the purchasers under said decree had full knowledge a' notice of your orators' claim. If, however, it continues to be and was an encumbrance on said lands superior to that of your orators, it could only be available as such in this proceeding, against which said Benson, Ewing & Hudson must account for the rents and income received from said lands since their possession accrued.

The said Sarah D. Partee, as one of the residuary devisees under the will of said Dick, as one of the heirs at law of said Christopher Todd, was entitled, when said Benson, Ewing & Hudson purchased the said Todd decree, & for a long time before, to one-fifth thereof, and the said James D. Partee, by purchase, to two-fifths thereof; and your orators are
154 advised, believe, and charge that, in any accounting hereafter touching the same, they are entitled to have said three-fifths remitted or charged to them, or credited against rents and profits received by them. They were not parties to said Drenning suit, and the said Sarah D. and James D. Partee have been in the use of said lands or part of them for a

length of time before and since the commencement of the proceedings in this cause more than sufficient to discharge any claim they might have had upon or to the said decree or any part thereof. To the end that this branch of their case be fairly decided, they pray full discharge from the said Benson, Ewing & Hudson, as to the amount paid by them in the purchase of the said Todd decree, to whom paid, and when and how paid, the amounts received by them for the rents, product, and income from said lands for the years 1877 and 1878, and the amount to accrue during the present
155 year, the amount paid out for taxes upon said lands, the balance claimed by said Drenning to be due upon said decree at the time of the sale thereof, and what was done with the proceeds of such sale; as to which last they pray discovery from said Drenning also.

Your orators are advised, believe, and charge that all of said defendants are bound & concluded by the decisions of the Supreme Court of the United States heretofore rendered in this cause, and cannot set up or rely upon any matter or thing heretofore pleaded and adjudicated; and that as to them equally with the defendants to their original bill, your orators are entitled to the substitution of a trustee, the appointment of a receiver, &c., an accounting for rents, and all other the relief prayed in and by their said original bill.

The premises considered, your orators pray that Joseph C. Benson, and Charles C. Ewing individually, and as administrator, of S. S. Ewing, deceased, Robert G. Hudson, Edward Drenning, as executor of the
156 last will and testament of James Stewart or Stuart, deceased, and administrator of Christopher Todd, deceased, O. H. McCall, Isaac Brown, H. Spiegut, and Jacob Schlenken, G. Hain, and E. Brummer, merchants trading under the firm name & style of Jacob Schlenker & Co., be made defendants in this proceeding, and compelled to answer the allegations of this their bill of revis*i*or and suppl*i*ment, and make full and perfect discovery as indicated; that the said original bill and proceedings may stand and be revised against the said Edward Drenning, as executor of said James Stewart, or Stuart, and be in the same plight and condition as the same were in at the abatement thereof; and that all necessary directions may be given for effectuately the several matters aforesaid; that all necessary and proper accounts be taken between all the parties in interest as herein and by their original bill prayed; that the said decree recovered by said Drenning, administrator of said Todd, be adjudged null
157 and vacated, or declared inoperative as against your orators and barred by the statute of limitations; that the said decree, the said Stewart judgment, and all the deeds and conveyances aforesaid adverse to your orators and hostile to their rights be vacated, set aside, and for nothing held or claimed upon their title; that a trustee be appointed and a receiver, as prayed in the original bill; that your orators' rights under their said trust-deed be adjudged to be paramount, and that account be taken of the amount due them, and their said trust-deed be enforced; that they have full benefit of the proceedings heretofore had in the cause against the defendants to this supplemental bill as an adjudication and of the prayer in their said original bill against them, or if mistaken, &c., for such & further and additional relief and decree as to equity belongs & the case requires.

May it please, &c., and as in duty bound, &c.,

NUGENT & HARLOW, *P. Q.*

158 Exhibit A[2] to said supplemental bill is in the words & figures following, to wit:

159 *Last will and testament of James Stewart, deceased.*

NEW ORLEANS, STATE OF LOUISIANA,
United States of America:

I, James Stewart, of New Orleans, State of Louisiana, being in sound health and perfect understanding, do make this my last will and testament, annulling all former wills and testaments:

1st. I give and bequeath to Amelia McKenna five hundred dollars.

2nd. I give and bequeath Charles Stewart, son of colored woman Louise, five hundred dollars.

3rd. I give and bequeath Edw'd Drenning, attorney at law, Yazoo City, five hundred dollars.

4th. I give and bequeath Mary Drenning, Yazoo City, sister of the above, five hundred dollars.

5th. To Samuel H. Mayne, son of Richard and Mary Mayne, I give and bequeath one thousand dollars.

My property at the present time consists of lands situated in
160 Louisiana and Mississippi, say in parish of East Baton Rouge and on the Yazoo River (the latter is called "Lake Dick" plantation), and promissory notes in the hands of E. Drenning for collection. Out of these lands and notes the foregoing legacies are to be paid when sold and the notes collected, proceeds remitted to my nephew, Wm. B. Hill, Kilcoman House, Islandmagne, County Antrim, Ireland, after paying all just debts that may be against my estate.

I hereby nominate, constitute, and appoint Edward Drenning, of Yazoo City, my sole executor to carry this my last will into effect. He is at present my constituted agent, with full power. This will is wrote by my own hand, this 20th day of May, 1872, in New Orleans, State of Louisiana, United States of America.

JAMES STEWART.

161 THE STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, G. M. Powell, clerk of the chancery court of said county, Robert Bowman, who, being duly sworn according to law, deposes and says that he is well acquainted with the handwriting of James Stewart, deceased, late of New Orleans, Louisiana, and that from his knowledge of his handwriting, upon inspection of the annexed instrument of writing, bearing date May 20th, 1872, and purporting to be the last will and testament of said James Stewart, together with the signature thereto, purporting to be the signature of said James Stewart, and that said instrument of writing and the signature thereto are, in the opinion of affiant, wholly in the handwriting of said James Stewart.

ROBERT BOWMAN.

Sworn to and subscribed before me this 5th day of June, A. D. 1876.

G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

162 Filed June 5th, 1876. Recorded June 9th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court in and for the county and State aforesaid, do hereby certify that the foregoing two pages & the upper portion of this page contain a true & correct copy and transcript of the last will and testament of James Stewart, late of New Orleans, La., deceased, together with the proofs & certificates thereof, as fully and completely as the same appears & remains of record in my office in book lettered "B," of the records of wills in and for said county, on pages 54 & 55 of said book.

Given under my hand & the seal of the chancery court of said county, at office in Yazoo City, county & State aforesaid, this 3rd day of June, A. D. 1879.

[SEAL.]

G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

163 Exhibit B² to said supplemental bill is in the words & figures following, to wit:

164 THE STATE OF MISSISSIPPI,
Yazoo County, ss:

By the chancery court of said county:

Whereas James Stewart, deceased, late of New Orleans, Louisiana, made in his life-time his last will and testament, which, on the 5th day of June, in the year of our Lord one thousand eight hundred and seventy-six, was proved, approved, and admitted to record in said court, and probate thereof granted to E. Drenning, the executor thereof, and therein appointed by said James Stewart, and the said E. Drenning, having complied with the provisions of the statute in such cases made and provided:

Therefore, to the intent that the said will may be well and truly performed, we do give, grant, and commit unto the said E. Drenning the administration of all and singular the goods and chattels, rights and credits, of and belonging to the estate of said testator, with full
165 power to take the same into his hands and possession, and to ask, levy, recover, and receive the same wherever they may be in this State; hereby requiring and enjoining upon the said E. Drenning to make a true and perfect inventory of all and singular the goods and chattels, rights and credits, which have or shall come to his hands, possession, or knowledge, or into the hands or possession of any other person or persons, for him to exhibit the said inventory to our said court within the time limited by law; to well and truly administer the said goods and chattels, rights and credits, according to law; to make a just and true account of his actings and doings therein, when thereto required by our said court, and to well and truly pay and deliver all the legacies contained and specified in the said will, so far as the said goods and chattels, rights and credits will extend, and the law charges him hereby confirming

166 the said executor with full and ample authority to dispose of all and singular the said goods and chattels, rights and credits according to the tenor of the said last will and testament, and the true intent and meaning of the said testator, by virtue of these presents.

Witness, the honorable E. G. Peyton, chancellor of the 9th district, this 9th day of June, A. D. 1876, and the seal of said court hereunto affixed.

[SEAL.] G. M. POWELL, *Clerk*,
By W. V. PUGH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. W. Powell, clerk of the chancery court in and for the county and State aforesaid, do hereby certify that the foregoing and annexed two pages contain a true and correct copy of the letters testamentary granted to Edward Drenning, as executor of the last will and testament of
167 James Stewart, deceased, by the chancery court of said county, together with the proofs thereof, as fully and completely as the same appears and remains of record in my office in books No. 2, of the record of executors' bonds and letters, on page 17 of said books.

Given under my hand and seal of said court, at office in Yazoo City, county and State aforesaid, this 3d day of June, A. D. 1879.

[SEAL.] G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

Exhibit C[2] to said supplemental bill is in the words & figures following, to wit:

168 James Stewart (p'r agent), deed to O. H. McCall et al.

This indenture made and entered into this 25th day of August, A. D. eighteen hundred and seventy-five, between James Stewart, by E. Drenning, his agent and attorney in fact, party of the first part, and O. H. McCall and James S. Crouch, parties of the second part, witnesses: that the said party of the first part, for and in consideration of the sum of five thousand dollars, as follows: Five hundred dollars cash in hand paid, the receipt of which is hereby acknowledged, and one thousand dollars payable January 1st, 1877. Fifteen hundred dollars payable January 1st, 1878, and one thousand dollars payable January 1st, 1879, and one thousand dollars payable January 1st, 1880, as is evidenced by the several promissory notes of said parties of the second part to said party of the first part, of
169 even date herewith, each bearing 10 per cent. interest per annum after maturity, does hereby grant, bargain, sell, and convey unto the said parties of the second part and unto their heirs and assigns, to have and to hold forever, the following described tracts of land lying in Yazoo County, State of Mississippi, to wit: Twenty-eight acres in lots 3, 4, 5, 6, 7, and 8, in section 5, less the homestead exemption of W. B. & S. D. Partee, in said section, containing nearly 50 acres; all of section 6 and northeast quarter of section 8, township 9, range 4 west north half of section 1; northwest quarter of section 2, and northeast quarter of section 3, township 9, range 3 west; lot 7, section 31, and lot 7, section 32, township

10, range 4 west; and lot 6, section 34, and lot 7, section 35, and lots 4 and 5, section 36, township 10, range 5 west, all lying south of the Yazoo River, and known as the "Lake Dick" and Mound places. A lein
170 being retained for the payment of said promissory notes; and further the said party of the first part hereby assigns to said parties of the second part the balance due on a certain, unsatisfied judgment in his favor rendered against Sarah D. Partee and William B. Partee, on the day of , A. D., in the circuit court of said Yazoo County, subject, however, to all the costs which have or may accrue on the same, and all the rents, revenues, and profits due and to become due on all or any of the above-mentioned premises, except the amount due by Louden Fisher, as his rent for the present year. And the said party of the first part, for himself and his heirs, covenants to and with the said parties of the second part, and their heirs and assigns, that he will forever warrant and defend the title herein conveyed except to the Mound place, lot 4, section 36, township 10, range 5 west.

In testimony whereof witness the hand and seal of said party
171 of the first part hereunto affixed the day and date first above written.

JAMES STEWART, [SEAL.]
By E. DRENNING, [SEAL.]
Att'y in fact.

STATE OF MISSISSIPPI,
County of Yazoo:

Before the undersigned, justice of the peace in and for said county, this day personally appeared E. Drenning, who acknowledged that *that* he signed, sealed, and delivered the foregoing deed on the day and date, and for the purposes therein written, for and on behalf of the said James Stewart, and as his act and deed, being thereunto duly authorized.

Given under my hand and seal this August 25th, 1875.

J. C. WILSON, *J. P.* [SEAL.]

Filed August 27th, 1875. Recorded August 28th, 1875. J. M. Dickson, clerk. By John Link.

THE STATE OF MISSISSIPPI,
Yazoo County:

172 I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing pages contain a true & correct copy and transcript of the deed from James Stewart, p'r agent, to O. H. McCall et al., together with the acknowledgment, proofs, and certificates thereof, as fully and completely as the same appears and remains of record in my office in book T. T., on pages 477 and 478 of the records of deeds of said county.

Given under my hand and seal of office this 15th day of May, A. D. 1879.

GEO. M. POWELL, *Clerk.*

Exhibit D[2] to said supplemental bill is in the words and figures following, to wit:

Jas. S. Crouch, deed to O. H. McCall.

This deed of conveyance made and entered into this the 14th day of February, A. D. 1878, by and between James S. Crouch & Georgia Crouch, his wife, party of the first part, and O. H. McCall, party of the second part, both of the county of Yazoo and State of Mississippi, witnesseth: That whereas, on the 25th day of August, 1875, the said James S. Crouch and O. H. McCall purchased from James Stewart a certain tract of land hereinafter described for the sum of five thousand dollars and executed to the said James Stewart their joint notes for the sum of four thousand and five hundred dollars in payment thereof, which said notes are yet unpaid: Now, for and in consideration that the said O. H. McCall shall well and truly pay said notes at maturity and assume all liabilities for the
174 purchase-money of said land to said James Stewart, and hold the said party of the first part herein entirely harmless, and in addition thereto assume and pay the indebtedness of the said James S. Crouch to Jacob Schlenker, of Vicksburg, amounting to about two hundred and fifty dollars, the said party of the first part has this day bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey to the party of the second part, his heirs and assigns, in fee-simple, forever, his undivided one-half interest in the following-described tract of land purchased by the said parties from James Stewart, said tract lying and being in the county of Yazoo and State aforesaid, and described as follows, to wit: Twenty-eight acres in lot 1, and lots 3, 4, 5, 6, 7, and 8, in said section 5, less the homestead exemption of W. B. & S. D. Partee in section containing nearly 50 acres; all of section 6 and NE. quarter of
175 section 8, township 9, range 4 west; north half of section 1, NW. quarter of section 2, and NE. quarter of section 3, township 9, range 5 west; lot 7, section 31, and lot 7, section 32, township 10, range 4 west; and lot 6, section 34, and lot 7, section 35, and lots 4 & 5, section 36, township 10, range 5 west, all lying south of the Yazoo River, and known as the Lake Dick and Mound places. And the said party of the second part is bound herein to hold said party of the first part harmless and pay the said indebtedness to Jacob Schlenker, as above agreed.

In witness whereof the party of the first part has hereunto set his hand & seal the day and date first above written.

JAMES S. CROUCH. [SEAL.]
GEORGIA O. CROUCH. [SEAL.]

THE STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, the undersigned, justice of the peace in and for said county, the within-named James S. Crouch, who ac-
176 knowledged that he signed, sealed, & delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given under my hand and seal this 14th day of February, A. D. 1878.

GEORGE A. GRAMMAR, [SEAL.]
Justice of the Peace of Warren County.

STATE OF MISSISSIPPI,
County of Yazoo:

Before the undersigned justice of the peace in and for said county this day personally appeared James S. Crouch and Georgia Crouch, his wife, and they say the interlineation of the words "and Georgia Crouch, his wife," as appears above, was made before signing, and the said James S. Crouch acknowledged that he signed, sealed, and delivered the foregoing deed on the day and date and for the purposes therein written as his act and deed. Also appeared Georgia Crouch, who, on a private examination, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the foregoing as her act and deed, fully and without any
177 fear, threats, or compulsion on the part of her husband, and as her voluntary act and deed, on the day and date and for the purposes therein written.

Given under my hand and seal this day of February, A. D. 1878.
J. E. BELL, *J. P.* [SEAL.]

Filed 2 p. m. May 3rd, 1878. Recorded May 3rd, 1878. G. M. Powell, clerk. By N. T. Pugh, *d. c.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing 4 pages contain a true & correct copy & transcript of the deed from Jas. S. Crouch et ux. to O. H. McCall, together with the acknowledgment, proofs, and certificates thereof, as fully and completely as the same appears & remains of record in my office in book YY, on pages 605 and 606 of the records of deeds of said county.

Given under my hand and seal of office this 16th day of May, A. D. 1879.

GEO. M. POWELL, *Clerk.*

178 Exhibit E^2 to said supplemental bill is in the words and figures following, to wit:

179 O. H. McCall et ax. Deed to R. G. Hudson.

This indenture made this the 4th day of December, 1878, between Oscar H. McCall and Etta McCall, his wife, parties of the first part, & R. G. Hudson, party of the second part, witnesseth that the parties of the first part, for and in consideration of two hundred & fifty dollars cash in hand, paid by the party of the second part, the receipt of which is hereby acknowledged, have this day bargained, sold, and conveyed, & by these presents do bargain, sell, & convey to the party of the second part the following lot or parcel of land situated in Yazoo County, Mississippi, on the east bank of the Yazoo River, to wit: One acre of land in lot one, section
5, T. 9, R. 4 W., being a part of lot one in the 28 acres reserved by
180 the said parties of the first part, and bounded as follows, to wit: Beginning at a stake on east bank of the Yazoo River and running back S. 63° W. 2 chains & 85 links to a stake; thence N. 27° W. 3 chains & 33 l'ks to a stake; thence N. 63° E. to the Yazoo River; thence up said

river to the place of beginning, containing one acre, more or less, in said lot one, sec. 5, T. 9, R. 4 west, to have and to hold unto the party of the second part, his heirs & assigns, forever in fee-simple. And the parties of the first part covenant & agree for themselves, their heirs, executors, or administrators, to and with the party of the second part, his heirs & assigns, to forever warrant the title to said property against the claim or claims of any & all persons.

Witness the hands & seals of the parties of the first part on the day & year first above written.

O. H. McCALL. [SEAL.]
ETTA McCALL. [SEAL.]

181 STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before the undersigned, a justice of the peace in & for said county, Oscar H. McCall, who acknowledged that he signed, sealed, and delivered the foregoing deed on the date thereof as his act and deed; also Etta McCall, wife of said O. H. McCall, who, on a private examination separate & apart from her said husband acknowledged that she signed, sealed, and delivered the foregoing deed on the date thereof for the purposes therein set forth as her act and deed, freely, without any fear, threats, or compulsion of her said husband.

Given under my hand & seal this the 8th day of May, 1879.

S. HARRISON, *J. P.* [SEAL.]

Filed 11 a. m., May 13th, 1879. Geo. M. Powell, clerk. Recorded May 14th, 1879, by C. E. Epperson.

182 THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing 2¼ pages contain a true and correct copy & transcript of the deed from O. H. McCall to R. G. Hudson, together with the acknowledgment, proofs, and certificates thereof, as fully & completely as the same appears & remains of record in my office, in book AC, on pages 231 & 232, of the records of deeds of said county.

Given under my hand & seal of office this 16th day of May, A. D. 1879.

[SEAL.] GEO. M. POWELL, *Clerk.*

Exhibit F^2 to said supplemental bill is in the words and figures following, to wit:

183 O. H. McCall et al. Deed trust to E. Drenning, trustee, James Stewart.

This indenture made and entered into this 25th day of August, A. D. 1875, between O. H. McCall and James S. Crouch, parties of the first part, E. Drenning, as trustee, of the second part, and James Stewart, of the third part, witnesses: that the said parties of the first part, for and in consideration of the sum of one dollar cash paid and the consideration hereinafter

mentioned, do hereby grant, bargain, sell, and convey unto the said E. Drenning, as trustee, and unto his successors or assigns, to have and to hold forever the tracts of land known as the "Lake Dick" and Mound places, lying in Yazoo County, Mississippi, less the homestead exemption of W. B. and S. D. Partee, being the same this day purchased of
184 said party of the first part, and also any interest in said homestead which may be purchased under a certain judgment this day assigned to said parties of the first part by James Stewart, the same being rendered against Wm. B. and S. D. Partee.

This conveyance is however upon trust and to the following uses: whereas said parties of the first part are justly indebted to said James Stewart as follows, in the sum of one thousand dollars, due January 1st, 1877, fifteen hundred dollars, due January 1st, 1878, one thousand dollars, due January 1st, 1879, and one thousand dollars, due January 1st, 1880, as is evidenced by the four several promissory notes of the said parties to James Stewart, of even date herewith, each bearing interest at the rate of ten per cent. per annum after maturity.

Now, if said notes are promptly paid at maturity then this convey-
185 ance to be void; but in the event said notes are not paid as above stated, then the said trustee shall enter upon and take possession of said premises and shall sell the same or a sufficient portion thereof to satisfy said notes as they severally fall due and default is made in their payment, provided, however, that no sale shall take place upon default as to the first notes falling due, if one-half of the amount due on each is paid at maturity, and in the event one-half of each of the first two notes is paid at the maturity of each respectively, then no sale shall take place until the third note falls due. The sale to take place in front of the court-house door in Yazoo City for cash, at auction, upon thirty days' notice by publication of the time, place, and terms of sale in some newspaper published in Yazoo City. And in the event said trustee shall die, or shall
186 fail, or refuse to perform the duties herein assigned to him, then the holder of said notes shall appoint some suitable person to act in place of said trustee, all of whose acts as such are hereby fully authorized.

In testimony whereof witness the hands and seals of said parties of the first part hereunto affixed the day and date first above written.

O. H. McCALL. [SEAL.]
J. S. CROUCH. [SEAL.]

I accept the trust.

E. DRENNING. [SEAL.]

STATE OF MISSISSIPPI,
County of Yazoo:

Before the undersigned, justice of the peace in and for said county, this day personally appeared O. H. McCall, grantor in the foregoing deed, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and date, and for the purposes therein written, as his act and deed.

Given under my hand and seal Aug. 25th, 1875.

J. C. WILSON, *J. P.* [SEAL.]

187 STATE OF MISSISSIPPI,
County of Yazoo:

Before the undersigned justice of the peace in and for said county, this day personally appeared James S. Crouch, grantor in the foregoing deed, who acknowledged that he signed, sealed, and delivered the foregoing on the day and date, & for the purposes therein written, as his act and deed.

Given under my hand and seal August 26th, 1872.

M. A. HARRIS, *J. P.* [SEAL.]

Filed Aug. 27th, 1875. Recorded Aug. 28th, 1875. J. M. Dickson, clerk, by John Link.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing 4 pages contain a true & correct copy and transcript of the deed from O. H. McCall et ux. to James Stewart, to-
188 gether with the acknowledgment, proofs, & certificates thereof as fully & completely as the same appears & remains of record in my office in book TT, on pages 478 & 479, of the records of deeds of said county.

Given under my hand and seal of office this 16th day of May, A. D. 1879.

[SEAL.] GEO. M. POWELL, *Clerk.*

Exhibit G² to said supplemental bill is in the words and figures following, to wit:

189 O. H. McCall. Deed of trust to Isaac Brown, trustee, Jacob Schlenker & Co.

This indenture made and entered into this 22nd day of March, A. D. 1878, between O. H. McCall, of the county of Yazoo, Mississippi, of the first part, and Jacob Schlenker & Co. of the third part, witnesseth. That whereas the said party of the first part is justly indebted to said parties of the third part in the sum of six hundred and ninety-nine and $\frac{10}{100}$ dollars for money, goods, plantation-supplies, &c., this day advanced to him, which indebtedness is evidenced by two promissory notes in writing of even date herewith, one for three hundred and sixty-four and $\frac{65}{100}$ dollars due and payable Oct. 1, 1878, the other for three hundred and thirty-four and $\frac{45}{100}$ dollars due and payable November 1st, 1878, both payable to the order of
190 said parties of the third part and signed by said party of the first part, and whereas said parties of the third part have agreed to advance to said party of the first part during the present year goods, wares, merchandise, plantation-supplies, &c., of the value of eight hundred and $\frac{90}{100}$ dollars in addition to the two notes above mentioned, to be due and payable on the 15th day of December, 1878, and whereas the said party of the first part is desirous of securing the prompt payment of said notes and such other sum or sums of money as may be due from him to said parties of the third part when they become due:

Now this indenture witnesseth that said party of the first part, for and in consideration of the premises and of the sum of ten dollars to him paid by said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto said party of the second part, his heirs
191 and assigns forever, the following-described tracts of land, situate the county of Yazoo and State of Mississippi, to wit: Twenty-eight acres in lot 1 and lots 3, 4, 5, 6, 7, & 8 in section 5, less the homestead exemption of W. B. & S. D. Partee in said section, containing nearly 50 acres; all of section 6 and northeast quarter of section 8 all in township 9, range 4 west; north half of section 1, northwest quarter of section 2, and northeast quarter of section 3, all in township 9, range 5 west; lot 7 in section 31 and lot 7 in sec. 32, in township 10, range 4 west; lot 6 in section 34, lot 7 in section 35, and lots 4 & 5 in section 36, in township 10, range 5 west, all lying south of the Yazoo Rivers, and known as the "Lake Dick" and "Mound" places, and being the same land conveyed to said O. H. McCall and one James S. Crouch, by deed duly re-
192 corded in book T T, pages 477, 478, of the record of deeds of said county of Yazoo; to have and to hold the same, with the appurtenances, unto said party of the second part, his heirs and assigns, in fee-simple forever. And said party of the first part hereby covenants to forever warrant and defend the right and title of the said lands and premises unto the said party of the second part, his heirs and assigns. But this deed is made upon the following trusts and conditions: Should said party of the first part fail to pay and satisfy said notes, or either of them, at their respective maturity, or fail to pay such other sum or sums of money on said 15th day of December, 1878, as may be due from him to said parties of the third part, as shown by their books, then all of such indebtedness shall become due and payable, and it shall be the duty of said party of the second part, when requested so to do by said Jacob Schlenker or their legal
193 holder or owner of said notes and other indebtedness, after giving notice of the time, terms, and place of sale by publishing such notice once a week for three successive weeks in some newspaper then published in the county of Warren, in said State, to sell at public auction to the highest bidder for cash, at the east door of the court-house of said county of Warren, all the above-described lands and tenements, or so much thereof as may be necessary for the payments of said notes and interest and of such indebtedness as may be then shown by said books of said parties of the third part, with interest, and also the costs of executing this trust; and out of the proceeds of such sale he shall pay, first, the costs and expenses of executing this trust; secondly, the above-described notes and interest, and such additional indebtedness from said party of the first
194 part to said parties of the third part as may then be shown by the books of the latter, with interest; and, thirdly, the balance, if any there be, he shall pay over to said party of the first part. But should said party of the first part well and truly pay said notes and other indebtedness at maturity, then this deed shall be null and void; otherwise it shall remain in full force and virtue.

It is agreed between the parties hereto that if said party of the second part shall die or become unable or unwilling to execute this trust, then said Jacob Schlenker, or the legal owner of either of said notes or of said in-

debtedness, may under his hand and seal appoint another trustee in his place and stead, whose actings and doings in the premises and in the execution of this trust shall be as binding as if done by said party of the second part. And Etta McCall, wife of said O. H. McCall, joins her
195 said husband in this deed for the purpose of conveying and relinquishing all her rights of dower in the aforesaid lands, and of conveying said lands and rendering this deed in all respects binding and valid. In testimony whereof the said O. H. McCall and Etta McCall, his wife, have hereto set their hands and seals the day and year first above written.

O. H. McCALL. [SEAL.]
ETTA H. McCALL. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County, ss:

Personally appeared before the undersigned, a justice of the peace in and for said county and State, the above-named O. H. McCall, who acknowledges that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, as his act and deed.

Also personally appeared Etta McCall, wife of said O. H. McCall, who, in a private examination before me separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the fore-
196 going deed, on the day and year therein mentioned, as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

Given under my hand and seal this 16th day of April, A. D. 1878.

J. E. BELL, [SEAL.]
Justice of the Peace.

Filed Ap'l 17th, 1878, 12½ p. m. G. M. Powell, clerk, by N. T. Pugh, d. c. Recorded Ap'l 19th, 1878, by I. Harlow.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing 6 pages contain a true & correct copy and transcript of the deed from O. H. McCall to Jacob Schlenker & Co., together with the acknowledgment, proofs, & certificates thereof, as fully and
197 completely as the same appears and remains of record in my office in book YY, on pages 568, 569, 570, & 571 of the records of deeds of said county.

Given under my hand and seal of office this 16th day of May, A. D. 1879.

[SEAL.] G. M. POWELL, *Clerk.*

Exhibit H² to said supplemental bill is in the words and figures following, to wit:

198 O. H. McCall, deed trust to Jacob Schlenker & Co.

This indenture made this the 29th day of January, 1879, between O. H. McCall, of the county of Yazoo and State of Mississippi, of the first

part, and Jacob Schlenker, Q. Hain, and E. Brunner, composing the commercial firm of Jacob Schlenker & Co., parties of the second part, and H. Spieget, party of the third part, trustee of the county of Warren, in said State, witnesseth: That whereas said party of the first part is indebted to said party of the second part for money, supplies, and provisions already advanced, and to be advanced him during the year 1879, to the amount of five hundred (500) dollars; and whereas said party of the first part agrees to pay said parties of the second part two and a half per cent. per annum, and all advances made, and also agrees to ship to said parties of the
199 second part his entire crop of cotton as rapidly as it is gathered and ready for market, and to allow them the usual mercantile commission for selling the same; and whereas said party of the first part is desirous to secure the prompt and punctual payment of the indebtedness so incurred and to be incurred by him to said parties of the second part: Now, therefore, this indenture witnesseth:

That for and in consideration of the premises, and the further consideration of five dollars to him in hand paid by said party of the third part, the receipt of which is hereby acknowledged, the party of the first grants, bargains, sells, and conveys unto the said party of the third part the following described property, to wit: Three dark-brown mare mules, two dark-brown horse mules, one iron-grey horse mule, one *sall* horse,
200 fourteen heads of cattle, one wagon, and his entire crop of cotton, corn, etc., raised by him and his hired hands during the present year, 1879. To have and to hold the same unto said party of the third part, his heirs and assigns, in fee-simple forever, in trust nevertheless and upon the following conditions, that if said party of the first part shall well and truly pay unto said parties of the second part all the indebtedness incurred by him as aforesaid for moneys, supplies, and provisions advanced him by said parties of the second part under this contract on or before the 15th day of October, 1879, then this obligation to be null and void; but if said party of the first part shall make default in the payment of the supplies so advanced him as aforesaid, then said party of the third part shall, at the request of said parties of the second part, seize and
201 take into his possession the property and crop herein described, and after giving ten days' notice of the time and place of sale, as he shall think proper, shall proceed to sell the same to the highest bidder for cash, and after paying the expense incident to the execution of this trust and the indebtedness which this deed is given to secure, shall pay over the residue, if any there be, to said party of the first part.

In testimony whereof said party of the first part has hereunto set his hand and seal, on the day and year first above written.

O. H. McCALL. [SEAL.]

THE STATE OF MISSISSIPPI,
Warren County:

Personally appeared before the undersigned, justice of the peace in and for said county and State, the within-named O. H. McCall, who acknowledged that he signed, sealed, and delivered the foregoing
202 deed, on the day and year therein mentioned, as his act and deed.

Given under my hand and seal this the 29th day of January, 1879.

L. M. LOWENBERY, *J. P.* [SEAL.]

Filed 7th day Feb'y, 1879, at 9 a. m. Recorded Feb. 24th, 1879, by C. E. Epperson.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing 3¼ pages contain a true & correct copy & transcript of the deed from O. H. McCall to Jacob Schlenker & Co., together with the acknowledgement, proofs, and certificates thereof, as fully and completely as the same appears & remains of record in my office in book 5, on pages 344, 345, & 346, of the record of deeds of said county.

Given under my hand & seal of office this 16th day of May, A. D. 1879.

[SEAL.] GEO. M. POWELL, *Clerk.*

203 Exhibit J² to said supplemental bill is in the words and figures following, to wit:

204 THE STATE OF MISSISSIPPI,
Yazoo County:

Pleas and proceedings at a special term of the honorable chancery court of said county, begun and held on Monday, the 8th day of January, A. D. 1877, at the court-house of said county, before his honor*able* E. G. Peyton, chancellor of the 9th chancery district of said State, in the following-entitled cause, viz, J. C. Benson et al. vs. Nelson, Lamphier & Co. et al.

Be it remembered that heretofore, to wit, on the 10th day of January, A. D. 1877, the same being a day in said term of said court, came on to be heard and tried the above-stated cause upon the bill of complaint, exhibits thereto, answer of E. J. Beiring and John Chaffe, Charles Chaffe and William Chaffe, exhibits thereto, and decree pro confesso against the rest of the defendants, all of the papers and proceedings of which cause
205 are in the words and figures following, to wit:

Original bill.

To the honorable E. G. Peyton, jr., chancellor of the 9th chancery district of Mississippi, sitting at Yazoo City, and sole presiding therein.

JOSEPH P. BENSON, CHARLES C. EWING, administrator of the estate of S. S. Ewing, deceased, late of Monroe County, Mississippi, and Lloyd R. Coleman, president of the Mechanics & Traders' Insurance Company, doing business in New Orleans, Louisiana, and A. S. Stuart and George Norton, members of the late firm of Stuart, Nelson & Co., formerly doing business in New Orleans, Louisiana, citizens of the city of New Orleans and State of Louisiana, complainants,

vs.

S. O. NELSON AND J. S. LAMPHIER, CITIZENS of the city of New Orleans, Louisiana, and T. A. Nelson, a citizen of Memphis, Tennessee, members of the late firm of Nelson, Lamphier & Co., formerly doing business in New Orleans, Louisiana, Mrs. Mary Harvey & John Chaffe,
206 Charles Chaffe and William Chaffe, members of the late firm of John Chaffe, Brother & Son, doing business in New Orleans, Louisiana, Robert H. Short and Jesse K. Bell, citizens of the city of New Orleans, Louisiana, and E. J. Beiring, a citizen of Allington and the State of Texas, defendants.

Complainants respectfully show unto your honor, as follows:

That the said defendant, T. A. Nelson, did, on the 15th day of April, 1873, duly executed a certain deed of trust, recorded in book MM, pages 304, 305, 306, 307, & 308, of the records of deeds, Yazoo County, Mississippi, a certified copy of which is filed herewith and marked "Exhibit A," in which he conveyed to the defendant, Robert H. Short, in trust for the benefit of Nelson, Lamphier & Co., or the holders of certain notes recited in said deed of trust, aggregating the sum of $35,000.00, certain real and personal property, situated and being in the county of Yazoo & State of Mississippi, and described as follows, to wit: The plantations
207 known as "No Mistake," "Tyrone," and "Seven Gums," composed of the following lands, to wit:

South half of section 9, T. 9, R. 4 west; NE. ¼ & south ½ of NW. ¼ & south ½ of section 10, T. 9, R. 4 west; W. ½ of NE. ¼ & NW. ¼ & south half of section 11, T. 9, R. 4 west; all of section 14, T. 9, R. 4 west; N. ½ & E. ½ of SE. ¼ of section 15, T. 9, R. 4 west; N. ½ & SE. ¼ of section 23, T. 9, R. 4 west; W. ½ of section 24, T. 9, R. 4 west; together with the improvements therein, consisting of quarters, storehouse, mechanic's shop, barns, stables, and other buildings, as well as gin-house, gin-stand, steam-engine, and saw-mill; and also, the wagons, carts, harness,

and plantation implements on said plantations; also, all the mules on or belonging to said plantations, numbering about fifty, and three horses.

Complainants also show that the crops of cotton and corn raised during the year 1873 were conveyed in said deed, but that none of said
208 crops, or the proceeds thereof, as they are informed and believe, were ever applied to the payment, or any part thereof, of the notes embraced in said deed of trust; that the defendant, T. A. Nelson, executed, at Memphis, Tennessee, eighteen promissory notes, aggregating the sum of $35,000.00, bearing date April 15th, 1873, drawn payable to his own order at the State National Bank of New Orleans, bearing 8% interest per annum from maturity until paid, & by him endorsed in blanks, as complainants are informed and believe, and as a reference to said deed of trust will show.

And the said T. A. Nelson did deliver the said notes to the said firm of Nelson, Lamphier & Co. to cover his said indebtedness to said firm, and did, in writing on the back of said notes, waive the necessity of protest or notice of the non-payment of the same; and the said firm of Nelson, Lamphier & Co., as your complainants are informed and believe, did
209 thereafter endorse all of said notes in blank, and transfer, assign, and pledge the same as collateral security for the indebtedness of said firm to various parties, and by such transfer, assignment, and pledge your complainants became the endorsees, owners, and holders of a part of said notes, as follows, to wit: J. P. Benson became & is the endorsee, holder, & owner of two of said notes, both dated April 15th, 1873, & bearing 8% interest per annum from maturity; one for five thousand dollars, & the other for seventeen hundred dollars, and both due on the twentieth day of March after the date thereof, which said notes are filed herewith, and marked, respectively, Exhibits "B" & "C." C. C. Ewing, as administrator, as aforesaid, a copy of whose letters is filed herewith & marked "Exhibit O," became and is the endorsee, owner, and holder of two of said notes; one for seventeen hundred dollars and the other for two thousand dollars, both due on the twentieth day of March next after date, dated as aforesaid, &
210 bearing interest as aforesaid and which are filed herewith, marked Ex-Exhibits "D" & "E," respectively. DeWitt C. Lyle became and is the endorsee, owner, & holder of one of said notes for three thousand dollars, dated and bearing interest as aforesaid and due on the 25th day of January after the date thereof, on which said note there is a credit of nineteen hundred and thirty dollars, dated January the 28th, 1874, which note and the credit thereon is filed herewith, marked "Exhibit F." Mrs. Mary C. Lyle became and is the endorsee, owner & holder of three of said notes, dated and bearing interest as aforesaid; one for five hundred and fifty dollars, due March 20th after the date thereof, which is filed herewith, marked "Exhibit G;" one for fifteen hundred dollars bearing interest and date as aforesaid, due February 18th after the date thereof, which is filed herewith & marked "Exhibit H," and one for twenty-two hundred
211 dollars, bearing date and interest as aforesaid, due March 20th after the date thereof, and which is filed herewith, marked "Exhibit I." Lloyd R. Coleman, president of the Mechanics' Insurance Company as aforesaid, became and is the endorsee, owner, and holder of two of said notes bearing date and interest as aforesaid, one for fifteen hundred dollars, due January 20th, 1874, which is filed herewith, marked "Exhibit

control, management of said mortgaged property until a sale of the same can be made in accordance with said deed of trust, and that he be empowered and authorized to collect the rents & profits of said property and perform all the duties and powers appertaining to the office of a receiver generally, and that he hold all money received by him subject to the order of your honorable court; that S. O. Nelson and J. S. Lamphier, whose post-office and residence is New Orleans, Louisiana, and T. A. Nelson, whose residence and post-office address is Memphis, Tennessee, and who compose the late firm of Nelson, Lamphier & Co. aforesaid, and Mrs. Mary Harvey, Jesse K. Bell, and John Chaffe, Charles Chaffe, and William Chaffe, of the late firm of John Chaffe, Brother & Son aforesaid, all of whose residence and post-office address is New Orleans, Louisiana,
220 and E. J. Beiring, whose residence and post-office address is Allington, Texas, and Robert H. Short, whose residence and post-office address is New Orleans, Louisiana, may be made defendants to this bill, and that they be duly cited and summoned by publication, as provided by law in the case of non-residents, to appear before this court on the first Monday in September, 1876, being the 4th day of said month, and the regular monthly rule-day of your honorable court, at the court-house of Yazoo County, in the town of Yazoo City, then and there to answer fully on their corporal oaths, all and singular, the several matters and things in this bill contained, as if especially thereunto hereinafter interrogated, and true answer make to the following interrogations:

1st. State what you have received as credits on any of the foregoing notes, if any, and the date and amount of the same.

221 2nd. State what security, if any, you have received for the payment of any of the foregoing notes, and describe the same fully and specifically, & state whether or not you have realized anything on the same.

That defendants show, if any they can, why the relief prayed for in this bill shall not be granted by your honorable court, and your complainants now pray for such other further and general relief as to your honor may seem equitable and proper, and in duty bound will ever pray, &c.

HUDSON & HUDSON,
Solicitors for Complainants.

STATE OF LOUISIANA,
Parish of Orleans:

This day personally appeared before me, the undersigned, a commissioner of deeds for the State of Mississippi, A. L. Stuart & Lloyd R. Coleman, complainants in the foregoing bill of complaint, who state on oath
222 that the matters and things stated in the foregoing bill are of their own knowledge true, except those stated on information and belief derived from others, and these they believe to be true.

LLOYD R. COLEMAN.
A. L. STUART.

Sworn to and subscribed before me this the 25th day of July, 1876.
[SEAL.]
J. G. EUSTIS,
Commissioner for Mississippi in New Orleans.

THE STATE OF MISSISSIPPI,
Monroe County:

This day personally appeared before me, H. S. Gilligler, clerk of the chancery court of said county, Joseph P. Benson, Dewitt C. Lile, & Mary C. Lile, complainants in the foregoing bill of complaint, who stated on oath that the matters and things stated in the foregoing bill of complaint are of their own knowledge true, except those stated on information and belief derived from others, & these they believe to be true.

J. P. BENSON.
D. C. LILE.
MARY C. LILE.

223 Sworn to and subscribed before me, as witness my hand and seal of office this 29th day of July, A. D. 1876.

[SEAL.] H. S. GILLEYLEW, *Clerk.*
By WM. G. ELKIN, *D. C.*

Also personally appeared at the same said Joseph P. Benson, agent for Charles C. Ewing, another of the complainants in the foregoing bill of complaint, who stated on oath that the matters and things stated in said bill are of his own knowledge true, except those stated on information and belief derived from others, and these he believes to be true.

CHARLES C. EWING,
Pr. J. P. BENSON,
Agent.

Sworn to and subscribed before me, as witness my hand and seal of office this 29th day of July, 1876.

H. S. GILLEYLER, *Clerk,*
By W. G. ELKIN, *D. C.* [SEAL.]

Filed August 1st, 1876. G. M. Powell, clerk, by N. T. Pugh, d. c.

224 EXHIBIT A.

Thomas A. Nelson, deed trust, R. H. Short, trustee, to Nelson, Lamphier & Co.

This indenture, made and entered into this fifteenth day of April, A. D. eighteen hundred and seventy-three, by and between Thomas A. Nelson, of the city of Memphis, in the State of Tennessee, of the first part, Robert H. Short, of the city of New Orleans and State of Louisiana, of the second part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners, doing business in the citp of New Orleans, in the State of Louisiana, under the firm and style of Nelson, Lamphier & Co., of the third part, witnesseth: That the said Thomas A. Nelson is justly and truly indebted to the said firm of Nelson, Lamphier & Co., merchants of said city of New Orleans as aforesaid, in the sum of thirty-five
225 thousand dollars, being the amount of his, Thomas A. Nelson's, eighteen notes, bearing date this day, drawn payable to his own order, and by him endorsed, payable at the State National Bank of New Orleans, bearing interest at the rate of eight per cent. per annum after maturity until paid, as follows, to wit: One for one thousand , payable

on the eighth day of January next; one for thirteen hundred dollars, payable on the 10th day of January next; one for two thousand dollars, payable on the twelfth day of January next; one for seventeen hundred and fifty dollars, payable on the fourteenth day of January next; one for two thousand dollars, payable on the fifteenth day of January next; one for twenty-five hundred dollars, payable on the seventeenth day of January next; one for fifteen hundred dollars, payable on the twentieth day of January next; one for three thousand dollars, pay-
226 able on the twenty-fifth day of January next; one for fifteen hundred dollars, payable on the tenth day of February next; one for two thousand dollars, payable on the twelfth day of February next; one for fifteen hundred dollars, payable on the eighteenth day of February next; one for eighteen hundred dollars, payable on the twentieth day of February next; one for two thousand dollars, payable on the twentieth day of March next; one for seventeen hundred dollars, payable on the twentieth day of March next; one for twenty-two hundred dollars, payable on the twentieth day of March next; one for five hundred and fifty dollars, payable on the twentieth day of March next; one for five thousand dollars, payable on the twentieth day of March next; one for seventeen hundred dollars, payable on the twentieth day of March next—in all thirty-five thousand dollars. And whereas the said Thomas A. Nelson is desirous to secure the punctual payment of
227 the same, this indenture witnesseth that the said Thomas A. Nelson, in consideration of the premises and in consideration of the further sum of ten dollars to him in hand paid by the said Robert H. Stout, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Robert H. Stout, the following real estate and personal property, situated in the county of Yazoo and State of Mississippi, together with all the improvements and appurtenances belonging or appertaining, viz., the plantation known as "No Mistake," "Tyrone," and "Seven Gums," composed of the following lands, to wit: South half of section 9, T. 9, R. 4 west; NE. ¼ & south ½ of NW. ¼, & south ½ of section 10, T. 9, range 4 west; W. ½ of NE. ¼ & NW. ¼ & south half of section 11, T. 9, R. 4 west; all of section 14; T. 9, R. 4 west; N. ½ & E. ½ of SE. ¼ of section 15, T. 9, R. 4 west; N. ½ & SE. ¼ of section 23, T. 9, R 4 west; W. ½ of
228 section 24, T. 9, R. 4 west, together with the improvements thereon, consisting of quarters, storehouse, mechanics' shops, barns, stables, and other buildings, as well as gin-house, gin-stand, steam-engine, and saw-mill, and also the wagons, carts, harness, and plantation implements on said plantation; also, all the mules on or belonging to said plantation, numbering about fifty, and three horses. The said Thomas A. Nelson also bargains and sells, hypothecates and pledges to the said Robert H. Short all of the crops of cotton and corn to be raised this year on said plantations, save and except that portion which may belong to the freedmen on the aforesaid plantations, and also such portion of the corn as may be required to feed and sustain the mules and other animals on the said plantations. To have and to hold the above-described real estate, personal property, and crops to be raised as aforesaid
229 unto him the said Robert H. Short, his heirs and assigns forever; in trust, nevertheless, and upon the following conditions, viz:

That the said Robert H. Short will permit the said Thomas A. Nelson to retain possession of the before-granted, bargained, and sold real estate and personal property until default occurs in the payment of the said eighteen notes executed by the said Thomas A. Nelson as aforesaid, amounting to the said sum of thirty-five thousand dollars, or any portion thereof, to the said Nelson, Lamphier & Co., their assigns or representatives, or by the holder or holders of said notes, the said Robert H. Short, trustee, shall, if requested by said Nelson, Lamphier & Co., their assigns or representatives, or by the holder or holders of said notes, take possession of said real estate and personal property herein specified, including the cotton and corn crops to be raised on said plantations, and proceed to sell the same at public auction to the highest bidder for cash, first
230 giving thirty days' notice of the time and place of selling the said real estate, personal and other property, by publishing the same for that length of time in some public newspaper published in the said county of Yazoo, and State of Mississippi, provided there is a newspaper published in said county, and if there should be none, then by posting notices in three public places in said county of Yazoo, in said State of Mississippi, setting forth the time and place of said sale (the right of appraisement and redemption of said real estate and personal property being waived by the said Thomas A. Nelson), and the said Robert H. Short, from the proceeds of such sale, after first deducting or defraying the expenses attending the execution of the trust herein specified shall pay over to the said Nelson, Lamphier & Co., their assigns or representatives, or to the holder or
231 holders of said notes, the said sum of thirty-five thousand dollars, together with the interest that may have accumulated on the same, and if any balance remains of the proceeds of said sale, the same to be by him, the said Robert H. Short, paid over to the said Thomas A. Nelson. The said Robert H. Short, upon making of said real and personal property as herein specified and provided for, shall make to the purchaser or purchasers good, complete, and sufficient titles to the same; but if the *same, but if the* said Thomas A. Nelson shall well and truly pay at maturity the said eighteen notes as herein set forth, amounting to thirty-five thousand dollars, according to the tenor and effect of these presents, then this conveyance to be null and void, but otherwise to remain in full force and effect. And it is agreed by and between the parties hereto, that in the event of the death of the said Robert H. Short, or of his becoming unable or unwilling to execute the trust herein specified,
232 or fail to do so when requested by the holder or holders of said notes, then, and in that case the sheriff or acting sheriff of the said county of Yazoo, and State of Mississippi, shall act as trustee to sell and convey title to the said real estate and personal property, and whose acts and doings in the premises shall be as binding and as effectual as if the same had been done by the said Robert H. Short.

In witness whereof we have hereunto set our hands and seals the day and year above written.

THOMAS A. NELSON. [SEAL.]
ROBERT H. SHORT. [SEAL.]
NELSON LAMPHIER. [SEAL.]

STATE OF LOUISIANA,
City of New Orleans:

Personally appeared before me, Andrew Hero, jr., a duly appointed and authorized commissioner of the State of Mississippi in and for the city and State aforesaid, the within-named Thomas A. Nelson, Robert
233 H. Short, and S. O. Nelson, and severally acknowledged that they signed, sealed, and delivered the within and foregoing instrument of writing as their voluntary act and deed, on the day and year, for the considerations, uses, and purposes thereon mentioned, and said Stephen O. Nelson also acknowledged that he signed, sealed, and delivered the same as the voluntary act and deed of his said firm of Nelson Lamphier & Co., on the day and year and for the considerations, uses, and purposes therein mentioned.

As witness my hand and seal at New Orleans this fifteenth day of April, A. D. 1873.

[SEAL.] ANDREW HERO, JR.,
Commissioner.

I, Miriam W. Nelson, wife of Thomas A. Nelson, of the county of Shelby, State of Tennessee, whose signature appears to the foregoing deed of conveyance to Robert H. Short, trustee as aforesaid, do hereby transfer, assign, relinquish, and convey to the said Robert H. Short, trustee,
234 for *for* the purposes therein mentioned, all the right, title, and interest held by me, the said Miriam W. Nelson, or which I may acquire as the wife of said Thomas A. Nelson, free from all claims of myself, heirs, assigns, executors, or administrators.

In witness whereof I hereunto set my hand and affix my seal this 16th day of April, A. D. 1873.

MIRIAM A. NELSON. [SEAL.]

STATE OF TENNESSEE,
City of Memphis:

COMMISSIONER'S OFFICE.

I, M. B. Trezevant, a commissioner of the State of Mississippi, duly appointed by the governor thereof, for the State of Tennessee, to reside in the city of Memphis and take the acknowledgments and proofs of the execution of deeds or other conveyances, or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, etc., to be used or recorded in said State of Mis-
235 sissippi, do certify that on this day personally appeared before me, Miriam W. Nelson, wife of Thomas A. Nelson, to me known to be the individual named in and who executed the annexed conveyance, and acknowledged the same to be her voluntary act and deed.

And the said Miriam W. Nelson, wife of the said Thomas A. Nelson, on a private examination made of her by me, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the said conveyance on the day and year therein mentioned, as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

Given under my hand and official seal, at Memphis aforesaid, this 17th day of April, 1873.

[SEAL.] M. B. TREZEVANT,
Commissioner for Mississippi, at Memphis, Tennessee.

236 Filed May 3rd, 1873. Recorded May 14*nd*, 1873. J. M. Sublett, clerk, by Link.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, hereby certify that the foregoing 9 pages contain a true and correct copy and transcript of the deed of trust from Thomas A. Nelson to Nelson, Lamphier & Co., together with the acknowledgments, proofs, and certificates thereof, as fully and completely as the same appears and remains of record in my office, in books lettered M M, on pages 304, 305, 306, 307, & 308, of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office at Yazoo City, said county & State, this 17th day of July, A. D. 1876.

[SEAL.] G. M. POWELL, *Clerk*,
By N. V. PUGH, *D. C.*

237 Filed August 2nd, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

NOTE BY THE CLERK.—Exhibits B, C, G, H, & I to the bill in this case were withdrawn from the file, and certified copies of the same filed with the papers, and are as follows:

EXHIBIT B.

$5,000.00.] MEMPHIS, TENN., *Ap'l* 15, 1873.

On the twentieth day of March next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of five thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsements:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.

238 EXHIBIT C.

$1,700.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the twentieth day of March next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of seventeen hundred dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity, until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsement:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.

I certify that the foregoing are true and correct copies of the two notes and endorsements thereon filed as Exhibits B & C, & alleged to be the property of J. P. Benson, in cause No. 896, on the general docket of the chancery court of Yazoo County, Mississippi, wherein J. P. Benson
239 et al. were complainants, and Nelson, Lamphier & Co. et al. were defendants.

Witness my hand & seal of office this 16th day of Feb'y, 1878.

[SEAL.] GEO. M. POWELL, *Clk.*

EXHIBIT G.

$550.00.] MEMPHIS, TENN., *April* 15, 1873.

On the twentieth day of March next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of five hundred and fifty dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsements:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.

EXHIBIT H.

$1,500.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the eighteenth day of February next I promise to pay to the
240 order of myself, at the State National Bank of New Orleans, the sum of fifteen hundred dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsements:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.

EXHIBIT I.

$2,200.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the twentieth day of March next I promise to pay to the order of myself at the State National Bank of New Orleans, the sum of twenty-two hundred dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsements:) T. A. Nelson. Nelson, Lamphier & Co.

241 We waive the necessity of protest or notice on this note.

T. A. NELSON.

I certify that the foregoing are true and correct copies of the three notes and endorsements thereon, filed as Exhibits "G," "H," & "I," & alleged to be the property of Mrs. M. C. Lile, in cause No. 896, on the general docket of the chancery court of Yazoo County, Mississippi, wherein J. P. Benson et al. were complainants, & Nelson, Lamphier & Co. et al. were defendants.

Witness my hand & seal of office this 16th day of February, 1878.

[SEAL.] GEO. M. POWELL, *Clk.*

Filed Feb'y 25th, 1878. G. M. Powell, cl'k, by N. T. Pugh, d. c.

EXHIBIT D.

$1,700.00.] MEMPHIS, TENN., *Ap'l* 15, 1873.

On the twentieth day of March next I promise to pay to the order
242 of myself, at the State National Bank of New Orleans, the sum of seventeen hundred dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.

Filed Aug. 2nd, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

EXHIBIT E.

$2,000.00] MEMPHIS, TENN., *April* 15, 1873.

On the twentieth day of March next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of two thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

243 (Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.

Filed Aug. 2d, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

EXHIBIT F.

$3,000.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the twenty-fifth day of January next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of three thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.
NELSON, LAMPHIER & CO.

This note is entitled to a credit on the 28th day of Jan'y, 1874,
244 of nineteen hundred & thirty dollars ($1,930).

Filed Aug. 2nd, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

EXHIBIT K.

$1,500.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the twentieth day of January next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of fifteen hundred dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co. R. H. Short.

On this note we hereby waive the necessity of either protest or notice.

NELSON, LAMPHIER & CO.
R. H. SHORT.

Filed Aug. 2nd, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

245 EXHIBIT L.

$2,000.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the fifteenth day of January next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of two thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co. R. H. Short.

On this note we hereby waive the necessity of either protest or notice.

NELSON, LAMPHIER & CO.
R. H. SHORT.

Filed Aug. 2nd, 1876. G. M. Powell, cl'k. By N. T. Pugh, d. c.

EXHIBIT M.

$1,000.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the eighth day of January next I promised to pay to the order of myself, at the State National Bank of New Orleans, the sum of
246 one thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

Stewart, Norton & Co. pay R. A. Parker, cashier, or order, for collection.

Per pro. UNION NAT'L BANK N. O.,
JAS. CHALENOXLY, *Cashier*.

N. O., Jan. 12th, 1874.

Rec'd on % of the within note one hundred dollars ($100).

MEMPHIS, TENN., *June 2d*, 1876.

Rec'd of T. A. Nelson on the within note three hundred & twenty-five dollars, in full satisfaction of all claims the Union Nat. Bank has against the within note.

CLAPP & MEUX,
Atty's for Bank.

On this note we hereby waive the necessity of either protest or notice.

NELSON, LAMPHIER & CO.

247 Filed Aug. 2nd, 1876. G. M. Powell, clerk, by N. T. Pugh, d. c.

EXHIBIT N.

UNION NATIONAL BANK OF NEW ORLEANS:

You are the holder of my note secured by trust-deed, and due on the 8– 11 January, 1874, for one thousand dollars ($1,000.00), and on which I hereby waive the necessity of either protest or notice.

Respectfully, yours,

T. A. NELSON.

NEW ORLEANS, January 10th, 1874.

Filed Aug. 2nd, 1876. G. M. Powell, clerk, by N. T. Pugh, d. c.

Order of publication.

WEDNESDAY, *August 2d*, 1876.

THE STATE OF MISSISSIPPI,
Yazoo County:

Chancery court of said county and State, before the clerk of said
248 court at his office in Yazoo City, county and State aforesaid, on Wednesday, August 2d, A. D. 1876.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. ET AL. } No. 896.

Upon opening the sworn bill of complainants in this case, and it appearing to the court therefrom that S. O. Nelson, J. S. Lamphier, and T. A. Nelson, members of the late firm of Nelson, Lamphier & Co., Mrs. Mary Harvey, Jesse K. Bell, and John Chaffe, Charles Chaffe, and William Chaffe, of the late firm of John Chaffe, Brother & Son, E. J. Beiring, and Robert W. Short, defendants in said bill, are non-residents of the State of Mississippi; and that the residence and post-office address of said S. O. Nelson, J. S. Lamphier, Mary Harvey, Jesse K. Bell, John Chaffe, Charles Chaffe, William Chaffe, and Robert H. Short is at New Orleans, in the State of Louisiana; and that the residence and post-office address of said T. A. Nelson is at Memphis, Tennessee; and that the residence
249 and post-office address of said E. J. Beiring is at Allington, in the State of Texas. It is, therefore, ordered that said defendants enter their appearance herein on or before the first Monday in September, A. D. 1876, being the 4th day of said month, at rules to be held on said day, before said clerk, at his office in the court-house of Yazoo County, Mississippi, and plead, answer, or demur to said bill, or the several allegations thereof will be taken for confessed as to them.

It is further ordered that publication hereof be made according to law in the Yazoo City Herald, a public newspaper printed and published in said Yazoo County, and that the clerk of said court transmit by mail a copy of this order to each of said non-resident defendants as by law directed.

G. M. POWELL, *Clerk*,
By N. T. PUGH, *D. C.*

250 *Proof of mailing.—Chancery notice.*

THE STATE OF MISSISSIPPI,
Yazoo County:

Chancery court of said county and State. Before the clerk of said court, at his office in Yazoo City, county and State aforesaid, on Wednesday 2nd, A. D. 1876.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. ET AL. } No. 896.

Upon opening the sworn bill of complainants in this case, and it appearing to the court therefrom that S. O. Nelson, J. S. Lamphier, and T.

A. Nelson, members of the late firm of Nelson, Lamphier & Co., Mrs. Mary Harvey, Jesse K. Bell, and John Chaffe, Charles Chaffe, and William Chaffe, of the late firm of John Chaffe, Brother & Son, E. J. Beiring and Robert H. Short, defendants in said bill, are non-residents of
251 the State of Mississippi, and that the residence and post-office address of said S. O. Nelson, J. S. Lamphier, Mary Harvey, Jesse K. Bell, John Chaffe, Charles Chaffe, William Chaffe, and Robert H. Short is at New Orleans, in the State of Louisiana; and that the residence and post-office address of said T. A. Nelson is at Memphis, Tennessee; and that the residence and post-office address of said E. J. Beiring is at Allington, in the State of Texas.

It is therefore ordered that said defendants enter their appearance herein, on or before the first Monday in September, A. D. 1876, being the 4th day of said month, at rules to be held on said day, before said clerk, at his office in the court-house of Yazoo County, Mississippi, and plead, answer, or demur to said bill, or the several allegations thereof will be taken for confessed as to them. It is further ordered that publication thereof be made, according to law, in the Yazoo City Herald, a public news-
252 paper printed and published in said Yazoo County, and that the clerk of said court transmit by mail a copy of this order to each of said non-resident defendants as by law directed.

G. M. POWELL, *Clerk*,
By N. T. PUGH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, do hereby certify that a copy of the annexed order was by me directed to each of the defendants named in said order, at their post-offices in said order mentioned, and to each of said firms at New Orleans, Louisiana, and this day transmitted by mail to them, severally, postage paid, by putting the same in the post-office at Yazoo City, said county and State.

Given under my hand and seal of office this 7th day of August, A. D. 1876.

[SEAL.]

G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

253 Sworn to and subscribed before me this 7th day of August, A. D. 1876.

N. T. PUGH, *D. C.*
S. W. SWAYZEE,
Circuit Clk Yazoo Co., Miss.

Filed Aug. 7th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

To interrogatories by complainants he answers:

260 1st. That he has never received or been paid anything whatever on said notes, or either of them, held by him.

2nd. He has no security whatever for their payment other than the trust-deed aforesaid. And having fully answered, respondent prays to be dismissed hence with his reasonable costs in this behalf expended.

D. JONES,
Sol. for Defendant.

Signature and affidavit of respondent to the foregoing answer waived.

HUDSON & HUDSON,
Sols. for Compl'ts.

Filed Aug. 26, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Exhibit No. 1 to Beiring's answer.

$1,750.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the 14th day of January next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of seventeen hundred and fifty dollars, for value received, bearing interest at the

261 rate of eight per ct. p'r annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest and notice on this note.

T. A. NELSON.
NELSON, LAMPHIER & CO.

Filed Aug. 26th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Exhibit No. 2 to Beiring's answer.

$2,000.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the 12th day of February next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of two thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest & notice on this note.

T. A. NELSON.
NELSON, LAMPHIER & CO.

262 Filed Aug. 26th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Order pro confesso.

In the chancery court, Yazoo County, Mississippi, at rules.

AT RULES, *Monday, September 4th*, 1876.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. ET AL. } No. 896.

SEPT. *4th*, 1876.

It appearing to the satisfaction of the court that notice having been given as required by law to the defendants, S. O. Nelson, J. S. Lamphier, T. A. Nelson, Robert H. Short, and Jesse K. Bell, and the same having been cited to be and appear before this court on this the 4th day of September, 1876, being a regular rule day of this court, to make answer to the bill of complaint in this cause, and the said defendants having failed to appear and answer, it is therefore ordered by the court that the
263 bill of complainants in this cause be taken as confessed by the defendants, S. O. Nelson, J. S. Lamphier, T. A. Nelson, Robert H. Short, and Jesse K. Bell.

Answer of John Chaffe et al.

Chancery court, Yazoo County, October term, 1876.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. ET AL. } No. 896.

To the Hon. E. G. Peyton, jr., chancellor, &c.

The joint answer of John Chaffe, Charles Chaffe, and William A. Chaffe, late partners, under the firm-name of John Chaffe, Brother and Son, of New Orleans, Louisiana, to the bill of complaint in the above-stated cause filed against them and others.

These respondents, reserving to themselves all rights of exception to said bill of complaint, for answer thereto say: They admit all the matters and things set forth in the certain deed in trust made by T. A. Nelson to R.
264 H. Short, to secure a certain indebtedness to the firm of Nelson, Lamphier & Co.; admit the due execution of said conveyance and the record of the same in Yazoo County, Mississippi, book MM, pages 304, 305, 306, 307, and 308.

These respondents neither admit nor deny the transfer and assignments to said complainants, as stated in said bill, and require strict proof the same.

These respondents admit the neglect and insufficiency of said R. H. Short, trustee, in allowing said real estate to be forfeited for taxes, and that by reason of interest the said trustee is disqualified to act as such; they admit the just claim of complainants to be reimbursed for the actual amount of money expended for taxes and legal interest, and to this extent

only, and that the sheriff of Yazoo County, trustee in the alternative under the provisions of said deed in trust, is a fit and proper person
265 to act under said deed, and that the said R. H. Short has upon proper request failed and refused to perform the duties assigned to him in said deed in trust. These respondents admit that the said property conveyed in said deed in trust is depreciating in value, and that it is now wholly insufficient to pay the sum of said notes, aggregating $35,000.00 *dollars*, and the accrued interest thereon, and that the rents of the present year should be secured for the benefit of the holders of said notes, and that all of the said property should be at once placed in the hands of a receiver.

These respondents state that they own and hold two of the promissory notes in said deed in trust mentioned, to wit, one for the sum of fifteen hundred dollars, due February 10, 1874, and one for eighteen hundred dollars, due February 20th, 1874, both dated Memphis, Tenn., April 15th, 1873, and bearing interest at the rate of 8 per cent. per annum
266 after maturity, all of which will more fully appear by reference to a copy of said notes filed herewith, marked "Exhibit No. 1"; that the same are overdue and wholly unpaid, except the sum of four hundred dollars paid on the first of said notes February, 1874, and that no other security or satisfaction has been received except as provided in said deed in trust, and that, as holders of said notes, respondents are justly entitled to a proper pro rata share of whatever amounts may be realized by the rents, revenues, and sales of said property to an extent sufficient to pay the balance on said notes and interest thereon.

And now having fully answered, &c.,

E. DRENNING,
Solicitor.

STATE OF LOUISIANA,
City of New Orleans:

Before the undersigned, a commissioner of the State of Mississippi, in New Orleans, duly qualified and acting, this day personal-
267 ally appeared John Chaffe, who on oath says that the matters and things in the foregoing answer stated on his own knowledge are true, and those stated on information derived from others he believes to be true.

JOHN CHAFFE.

Sworn to and subscribed before me this 8th day of September, A. D. 1876.

A. J. ARMSTRONG, [SEAL.]
Commissioner.

Filed Sept. 11th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Exhibit No. 1 to ans. of John Chaffe et al.

$1,500.00.] MEMPHIS, TENN., *April 15th*, 1873.

On the 10th day of February next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of fifteen hundred dollars for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

268 (Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.
NELSON, LAMPHIER & CO.

This note is entitled to a credit on the 10th day of Feb'y of four hundred doll's ($400.00).

$1,800.00.] MEMPHIS, TENN., *April* 15, 1873.

On the twentieth day of February next I promise to pay to the order of myself, at the State National Bank of New Orleans, the sum of eighteen hundred dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

T. A. NELSON.

(Written across the face in red ink:) Secured by deed of trust of even date herewith.

(Endorsed:) T. A. Nelson. Nelson, Lamphier & Co.

We waive the necessity of protest or notice on this note.

T. A. NELSON.
NELSON, LAMPHIER & CO.

Motion for appointment of a receiver.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL.

269 Motion by complainants to appoint R. W. Stewart, a receiver, to take charge and control of the property, both real and personal, mentioned and described in the bill of complaint in this cause; to collect the rents of the same for the year 1876; to preserve the same from injury or destruction; to pay the taxes on so much of said property as may be in his possession & control at the expiration of the time for the payment of taxes of 1876, and to do & perform all duties usually appertaining to the office of a receiver.

HUDSON & HUDSON,
Sol's for Compl'ts.

We accept notice, waive service, and consent to the appointment of a receiver in accordance with the above motion Sept. 5th, 1876.

E. DRENNING,
For Chaffe, Bro. & Son.
D. JONES,
For Beiring.

270 *Agreement of counsel.*

In chancery court, Yazoo County, Mississippi.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER ET AL.

Original bill. Exhibits A, B, C, D, E, F, G, H, I, K, L, M, N, & O to said bill. Answer of E. J. Beiring, & Exhibits 1 & 2 to same. Proof of mailing. Decree pro confesso against S. O. Nelson, J. S. Lamphier, T. A. Nelson, Robert H. Short, and Jesse K. Bell, & a motion to appoint a receiver constitute the papers in this case. We consent that the chancery clerk of said court may forward the papers in the aforesaid case, which consists of the papers named above, to the chancellor of the 9th chancery district of said State, at his residence at Hazlehurst, & agree to release him from all responsibility for the same.

HUDSON & HUDSON,
Sol's for Compl'ts.
E. DRENNING,
For Jno. Chaffe, Bro. & Son.

271 *Order appointing receiver.*

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL.

This cause coming on for hearing before the chancellor, at chambers, upon the motion of complainants for the appointment of a receiver, and the chancellor being fully advised in the matter, sustains said motion, and appoints R. W. Stewart a receiver to take charge and control of the property, both real and personal, mentioned & described in the bill of complaint in this cause, to collect the rents of the same for the year 1876, to preserve the same from injury or destruction, to pay the taxes on so much of said property as may be in his possession and control at the expiration of the time for the payment of taxes of 1876, & and to do and perform all duties usually appertaining to the office of a receiver. But before
272 being authorized to act as such, said receiver shall give bond in the penalty of two thousand dollars ($2,000), with good sureties conditioned as the law prescribes.

Ordered, adjudged, and decreed at chambers, in the town of Hazlehurst, this Sept. 12th, A. D. 1876.

E. G. PEYTON, *Chancellor.*

Filed Sept. 20th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

NOTE BY THE CLERK.—Another motion for the appointment of a receiver in this case was, but is not now, on file in my office among the papers in this cause, and cannot, after diligent search by me be found.

273 *Order appointing a receiver.*

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL.

This cause coming on for hearing before the chancellor at chambers, on the motion of complainants to appoint S. H. Childress a receiver in the place and stead of R. W. Stewart, who failed to qualify, and the chancellor, being fully advised in the premises, sustains said motion. It is thereupon ordered, adjudged, and decreed that said H. S. Childress be and he is hereby appointed a receiver in this cause to take charge of, manage, control, and rent the property in controversy, to collect the rents, pay the taxes, and do all things necessary and legal in regard to the same, that may be required by law, on the order of the court, bond to be given in the
the penalty of two thousand dollars, with good and sufficient sure-
274 ties, conditioned as the law prescribes.

Given under my hand and seal at chambers this Oct. 17th, A. D. 1876.

E. G. PEYTON, [SEAL.]
Chancellor.

Filed Oct. 18th, 1876. G. M. Powell, cl'k., by N. T. Pugh, d. c.

Bond of receiver.

THE STATE OF MISSISSIPPI,
Yazoo County:

Know all men by these presents that we, S. H. Childress, principal, and J. J. Cowan, Albert Newman, & W. H. Richardson, sureties, are held and firmly bound unto the State of Mississippi in the penal sum of two thousand dollars, payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly & severally, firmly by these presents.

Signed with our names & sealed with our seals this the 17th day of October, A. D. 1876.

The condition of the above obligation is such, that whereas
275 the said bounden S. H. Childress has been appointed by the chancellor of the 9th chancery district of said State a receiver in a certain cause now pending in the chancery court of said county & State, in which J. P. Benson et al. are complainants, and S. O. Nelson et al. are defendants, and known and designated as numbers 896 on the general chancery docket of said court, to control, preserve, lease, collect rents, pay taxes, and do all things necessary & legal in and about the property in controversy in said cause, & that he will receive and safely keep all money or property that may come to his hands as receiver; that he will render true and correct accounts of his receipts and disbursements, and of the condition and situation of the money and property in his hands, as often as he may be required by the court, and will dispose of and deliver such money

and property in such manner and to such persons as the court may
276 at any time direct, and will, in all things, faithfully discharge the duties of his office as receiver.

Now, therefore, if the said S. H. Childress shall well and truly discharge his duties as receiver as above, then this obligation to be void, otherwise to remain in full force & effect.

S. H. CHILDRESS. [SEAL.]
J. J. COWAN. [SEAL.]
ALBERT NEWMAN. [SEAL.]
W. H. RICHARDSON. [SEAL.]

Bond and sureties approved at chambers, this Oct. 23rd, 1876.
E. G. PEYTON, *Chancellor.*

Filed Oct. 24th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Order setting aside pro confesso.

At rules, Monday, November 6th, 1876.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. } No. 896.

The motion herein by complainants to set aside the decree pro confesso heretofore taken before the clerk at rules, on the first Monday in September, 1876, against S. O. Nelson, T. A. Nelson, J. S. Lamphier,
277 Mrs. Mary Harvey, Robert H. Short, & J. K. Bell, defendants in this case, having been heard and considered by said clerk, it is ordered that said motion be, and the same is hereby, sustained.

GEO. M. POWELL, *Cl'k.*

Petition to compel receiver to pay over rents collected by him.

To the Hon. E. G. Peyton, jr., chancellor of the chancery district of the State of Mississippi, sitting at Yazoo City, in the county of Yazoo & sole presiding therein:

The petition of Robert Bowman, of Yazoo County, and J. A. P. Campbell, of Madison County, respectfully show that in a certain cause now pending in the chancery court of Yazoo County, Mississippi, wherein J. P. Benson et al. are complainants and Nelson, Lamphier & Co. et al. are defendants, Samuel H. Childress, by order of your honor, was, on or about the day of October, 1876, appointed a receiver in said cause and duly accepted and qualified as such, and entered upon the du-
278 ties and as directed by said order he has collected as rents of the lands in complainants' bill mentioned, twenty-three bales of cotton from Jas. D. Partee, the tenant of said lands for the present.

Your petitioner' state that at the November term, 1875, of the circuit court of Yazoo County, the said Campbell recovered a judgment for about $537.00, & the said Bowman for about $692.00 against Nelson, Lamphier & Co., the owners of said lands, and said James D. Partee, the tenant for the present year. That some time in April, 1876, the said Nelson, Lam-

phier & Co. wrote to said Bowman a letter, by which they transferred said rents to said Bowman & Campbell, to be applied to said judgments if not paid sooner than the 10th of November, 1876, when said rents were due. No part of said judgments have been paid. The counsel employed in said chancery cause, to wit, Messrs. Hudson & Hudson, Daniel Jones,
279 & Edward Drenning, representing all the complainants & defendants in interest, agreed with said Bowman, representing himself and said Campbell, that the s'd receiver should pay said rents to said Bowman for himself and said Campbell to the amount of twelve hundred dollars, as fast as received, and when said sum was paid then the said Bowman, who is the attorney at law as well as attorney in fact of said Campbell was to transfer said judgments as well as the assignments of the lease to said parties, complainants and defendants, who were interested in said rents.

Your petitioners state that afterwards said attorneys, Messrs. Hudson & Hudson, Jones, and Drenning, gave to said Bowman an order on said Childress, receiver, as afterwards, directing him to pay and turn over forthwith all the proceeds in money & cotton of said rents which had or might come to his hands to the amount of $1,200.00, but said Childress
280 refuses to do so unless, as he alleges, there is an order made by your honor for him to do so. The net rents of said lands are about 15,000 to 17,000 pounds of cotton, and only about nine or ten thousand have been collected, the said Childress being now enjoined from further collection, & the said James D. Partee & Nelson, Lamphier & Co. being insolvent. Petitioners pray for an order commanding said Childress under a penalty to pay over to said Bowman for himself & said Campbell, the rents collected by him as such.

ROBERT BOWMAN.
J. A. P. CAMPBELL,
P'r ROBERT BOWMAN, *Att'y, &c.*

We have examined foregoing petition, and the facts stated therein are true, & we not only consent, but join in the application for the order prayed against said Childress, receiver.

E. DRENNING,
Att'y for Chaffe Bro. & Son.
HUDSON & HUDSON,
Att'ys for Complainants.
D. JONES,
Solicitor for Beiring.

281 Filed Dec'r 15th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Order for receiver to pay over rents.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL.

The petition of Robert Bowmam and J. A. P. Cambell, praying for an order commanding the receiver in this cause, Childress, to pay over to said petitioners the rents collected by him as such, came on for hearing

before the chancellor at chambers, and the chancellor, after maturely considering the same, is of opinion that said prayer should be granted.

It is thereupon ordered, adjudged, and decreed that said Childress be, and he is hereby, commanded to pay over to said Bowman, for himself and said Campbell, the rents collected by him as receiver in this cause.

E. G. PEYTON, *Chancellor.*

This Dec. 12th, A. D. 1876.

282 Filed Dec. 15, 1876. G. M. Powell, cl'k, by N. T. Pugh.
E. G. Peyton, chancellor.

Certified copy of order for receiver to pay over rents.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL.

The petition of Robert Bowman and J. A. P. Campbell, praying for an order commanding the receiver in this cause, Childress, to pay over to said petitioners the rents collected by him as such, came on for hearing before the chancellor at chambers, and the chancellor, after matursly considering the same, is of opinion that said prayer should be granted. It is thereupon ordered, adjudged, and decreed that said Childress be, and he is hereby, commanded to pay over to said Bowman, for himself and said Campbell, the rents collected by him as receiver in this cause.

E. G. PEYTON, *Chancellor.*

This Dec. 12, A. D. 1876.

283 THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, do hereby certify that the foregoing page contains a true & correct copy & transcript of the order of his honor E. G. Peyton, chancellor of the 9th chancery district of said State, granted at chambers in the case of J. P. Benson et al. vs. Nelson, Lamphier & Co. et al., now pending in the chancery court of said county, as fully & completely as said order appears & remains on file in my office among the papers in said cause.

Given under my hand & seal of office this 15th day of December, A. D. 1876.

[SEAL.]

G. M. POWELL, *Clk,*
By N. T. PUGH, *D. C.*

To the sheriff of Yazoo County, Miss., to serve on S. H. Childress, receiver in above-stated case, and make due return of same.

Rec'd Dec. 12th, 1876.

H. L. TAYLOR *Sheriff,*
By M. W. SMITH, *D. C.*

284 Executed Dec. 20th, 1876, by handing a true copy hereof to S. H. Childress, receiver in this cause.

H. L. TAYLOR, *Sheriff,*
By J. A. BARKSDALE, *D. C.*

Order pro confesso.

At rules, Monday, January 1st, 1877.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL. } No. 896.

The motion of complainants for a decree pro confesso against S. O. Nelson, T. A. Nelson, J. S. Lamphier, Mrs. Mary Harvey, Robert H. Short, & J. K. Bell, defendants in this cause, having been heard & considered by the clerk of this court, and it appearing that said defendants are duly in court by publication and proof of same, & proof of mailing notices to them, and without plea, answer, or demurrer, it is ordered that the bill in this case be, & the same is hereby, taken for confessed as against said defendants.

285 *Agreement of counsel.*

It is agreed between the parties to the suits of J. P. Benson et al., complainants, vs. Nelson, Lamphier & Co., now pending in the chancery court for Yazoo County, Mississippi; Robert Bowman vs. Nelson, Lamphier & & Co., in the circuit court of said county; and in the suit of J. A. P. Campbell vs. Nelson, Lamphier & Co., in the aforesaid last-mentioned court, through their counsel, that the rent for the "No Mistake" and "Tyrone" plantations for the year 1876, due from James D. Partee to Nelson, Lamphier & Co., shall continue to be collected by S. H. Childress, and the cotton disposed of by him to the best advantage for all parties interested in the rent, and as the proceeds of the cotton comes to his (Childress) hands, after deducting all charges and expenses incident to the collection thereof, he shall turn over the same to Robert Bowman for himself, and as
286 attorney for J. A. P. Campbell, to the amount and sum of twelve hundred dollars, including the amount to be derived from a sale of cotton now unsold, in the hands of the sheriff of Yazoo County.

It is further agreed that upon payment of the aforesaid sum of twelve hundred dollars to Robert Bowman for himself, and as attorney for J. A. P. Campbell, they shall transfer their judgments against Nelson, Lamphier & Co. to the creditors of Nelson, Lamphier & Co. who are parties to the suit now pending in the chancery court aforesaid. It is further agreed that if after paying Bowman and Campbell the aforesaid sum of twelve hundred dollars there shall not be enough money arising from the aforesaid rent to pay the taxes that may be due and owing on the plantations aforesaid and the personalty thereto attached, then and in that case the said Bowman & Campbell are to make up the deficit from the
287 amount paid them. But if, after paying the aforesaid sum of twelve hundred dollars to Bowman & Campbell, and the taxes due on the plantations aforesaid and the personalty thereto attached, there be any overplus or surplus the same is to be paid to the counsel and attorneys of the aforesaid creditors, parties to the aforesaid suit in chancery against

Nelson, Lamphier & Co. in proportion to the amount of their respective claims.

D. JONES,
For Bening.
HUDSON & HUDSON,
For Benson.
EWING, LYLE & STUART.
ROBERT BOWMAN.
J. A. P. CAMPBELL,
P'r ROBERT BOWMAN,
His Att'y.
E. DRENNING,
For Chaffe Bro. & Son.

288 *Proof of publication.*

CHANCERY NOTICE.

THE STATE OF MISSISSIPPI,
Yazoo County:

Chancery court of said county and State, before the clerk of said court, at his office, in Yazoo City, county and State aforesaid, on Wednesday, August 2d, A. D. 1876.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL. } No. 896.

Upon opening the sworn bill of complainants in this case, and it appearing to the court therefrom that S. O. Nelson, J. S. Lamphier, and T. A. Nelson, members of the late firm of Nelson, Lamphier & Co.; Mrs. Mary Harvey, Jesse K. Bell, and John Chaffe, Charles Chaffe, and William Chaffe, of the late firm of John Chaffe Brother & Son; E. J. Beiring, and Robert H. Short, defendants in said bill, are now residents of the State of Mississippi, and that the residence and post-office address of said S. O. Nelson, J. S. Lamphier, Mary Harvey, Jesse K. Bell, John Chaffe,
289 Charles Chaffe, William Chaffe, and Robert H. Short, is at New Orleans, in the State of Louisiana; and that the residence and post-office address of said T. A. Nelson is at Memphis, Tennessee, and that the residence and post-office address of said E. J. Beiring is at Allington, in the State of Texas:

It is therefore ordered that said defendants enter their appearance herein on or before the first Monday in September, A. D. 1876, being the 4th day of said month, at rules to be held on said day, before said clerk, at his office in the court-house of Yazoo County, Mississippi, and plead, answer, or demur to said bill, or the several allegations thereof will be taken for confessed as to them.

It is further ordered that publication hereof be made, according to law, in the Yazoo City Herald, a public newspaper printed & published in said Yazoo County, and that the clerk of said court transmit by mail
290 a copy of this order to each of said non-resident defendants as by law directed.

G. M. POWELL, *Clerk*,
By N. T. PUGH, *D. C.*

HUDSON & HUDSON,
Solicitors for Complainants.

STATE OF MISSISSIPPI,
Yazoo County, ss:

Before me, Geo. M. Powell, chancery clerk in and for said county, personally appeared James P. Clarke, one of the publishers of a public newspaper printed & published in Yazoo City, said county, called the Yazoo City Herald, who, being duly sworn, did depose and say that publication of the notice hereunto annexed has been made in said newspaper for the space of 4 weeks since the date thereof, to-wit: In No. 22, dated the 4th day of Aug., 1876; in No. 23, dated the 11th day of Aug., 1876; in No. 24, dated the 18th day of Aug., 1876; in No. 25, dated the 25th day of Aug., 1876: in No. 26, dated the 1st day of *Aug.*, 1876. Said publication beginning on the 4th day of August and ending on the 1st day of September, A. D. 1876.

JAMES P. CLARKE.

291 Sworn to and subscribed before me the 1st day of September, 1876.

G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

I, Geo. M. Powell, chancery clerk in & for said county, do certify that the several numbers containing the publication hereunto annexed, have been produced before me and compared with said copy, and that I have found the same and the proof to be truly and correctly made.

G. M. POWELL, *Clerk*,
By N. T. PUGH, *D. C.*

Filed Jan'y 5th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Order confirming order pro confesso.

MONDAY, *Jan'y 8th*, 1877.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. ET AL. } No. 896.

Ordered, that the action of the clerk of this court, at rules, Sept. 4th, 1876, in granting an order pro confesso, against S. O. Nelson, J. S. Lamphier, T. A. Nelson, Robert H. Short, & Jesse K. Bell, defendants
292 in this case, be, and the same is hereby, confirmed.

Order confirming order setting aside pro con.

MONDAY, *January 8th*, 1877.

J. P. BENSON ET AL. *vs.* NELSON, LAMPHIER & CO. ET AL. } No. 896.

Ordered, that the action of the clerk of this court, at rules, November 6th, 1876, in ordering to be set aside the order pro confesso, heretofore granted by said clerk at rules, Sept. 4th, 1876, against the defendants in this case therein mentioned be, and the same is hereby, confirmed.

Order for rule, &c., against receiver.

MONDAY, *January* 8th, 1877.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL. } No. 896.

Ordered, that the motion by Robert Bowman for a rule against Samuel H. Childress, receiver in this case, to show why an attachment should not be issued against him for the non-payment of rents collected by
293 him as receiver in this case to said Robert Bowman, as per order of the chancellor, and for summons to said Childress, be and the same is hereby, sustained.

NOTE BY THE CLERK.--The summons issued to S. H. Childress, receiver, upon motion in this case, is not now on file in my office among the papers in this casuse, and cannot, after diligent search by me, be found.

G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

Order confirming order pro confesso.

MONDAY, *January 8th*, 1877.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL. } No. 896.

Ordered, that the action of the clerk of this court, at rules, January 1st, 1877, in granting an order pro confesso against S. O. Nelson, T. A. Nelson, J. S. Lamphier, Mrs. Mary Harvey, Robert H. Short, & J. K. Bell, defendants in this cause be, and the same is hereby, confirmed.

294 *Final decree.*

Chancery court, Yazoo County, Mississippi.

WEDNESDAY, *January 10th*, 1877.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL. } No. 896.--*No. 896.*

This cause coming on this day to be heard upon bill of complaint, exhibits thereto, answers of E. J. Beiring, and John Chaffe, Charles Chaffe, & Wm. Chaffe, exhibits thereto, and decree pro confesso against rest of defendants, and the same being fully heard & considered, and it appearing to the satisfaction of the court that complainants are entitled to the relief sought, it is therefore ordered, adjudged, and decreed that H. L. Taylor, sheriff of Yazoo County, Mississippi, or the acting sheriff at the time of the execution of this decree, be, and he is hereby, appointed a special commissioner to execute a certain deed of trust recorded in books M M,

pages 304, 305, 306, 307, & 308 of the records of Yazoo County,
295 Mississippi, the same being the subject-matter of this cause, and to sell said property described in said deed of trust in accordance with the terms thereof; that said commissioner take possession forthwith of said property in said trust-deed mentioned, and out of the proceeds of said property said commissioner shall first pay all costs of this suit, and of executing said deed of trust, & then pay the holders of the notes mentioned in said trust-deed & intended to be secured thereby their pro rata share of said proceeds after paying said costs.

Given under my hand and seal this the 10th day of January, A. D. 1877.

E. G. PEYTON,
Chancellor 9th Ch'y Dist. of Mississippi.

Filed Jan'y 10th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Proof of publication, sale of lands.

COMMISSIONER'S SALE.

296 Chancery court, Yazoo County, Mississippi.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL. } No. 896.

Pursuant to a decree of said chancery court, rendered at the special January term, 1877, of said court, in the above-stated case, I will, as commissioner appointed therein, on Monday, February 19th, 1877, in front of the court-house door, in the town of Yazoo City, in said county and State, within the hours prescribed by law, offer for sale at public auction to the highest bidder for cash the following valuable lands in said county and State, in tracts not greater than one hundred and sixty acres, to wit: The plantations known as "No Mistake," "Tyrone," and "Seven Gums," composed of the following lands: The south half of section 9; northeast quarter and south half of northwest quarter and south half of section 10;
west half of northeast quarter and northwest quarter and south
297 half section 11, and all of section 14; north half and east half of southeast quarter of section 15; north half and southeast quarter of section 23; west half section 24; all in township 9, range 4 west; together with the improvements thereon, consisting of quarters, storehouse, mechanics' shops, barns, stables, and other buildings, as well as gin-house, gin-stand, steam-engine, and saw-mill; and also the wagons, carts, harness, and plantation implements on said plantation, also about fifty mules and three horses.

H. L. TAYLOR,
Sheriff and Commissioner.

HUDSON & HUDSON,
Sol's for Compl'ts.

THE STATE OF MISSISSIPPI,
Yazoo County, ss:

Before me, Geo. M. Powell, clerk of the chancery court in and for said

county, personally appeared James P. Clarke, the publisher of a public newspaper printed and published in Yazoo City, said county, called
298 the Yazoo City Herald, who, being duly sworn, did depose and say that publication of the notice hereunto annexed has been made in said newspaper for the space of 4 weeks since the date thereof, to wit:

In No. 46, dated the 19th day of Jan., 1877.
" 47, " 26th " " 1877.
" 48, " 2d " Feb., 1877.
" 49, " 9th " " 1877.
" 50, " 16th " " 1877.

Said publication beginning on the 19th day of Jan., and ending on the 16th day of Feb., A. D. 1877.

JAMES P. CLARKE, *Publisher.*

Sworn to and subscribed before me the 16th day of Feb., 1877.
GEO. M. POWELL, *Clerk.*

I, Geo. M. Powell, clerk of the chancery court in and for said county, do certify that the several numbers of the paper containing the publication hereunto annexed have been produced before me and compared with said copy, and that I have found the same and the proof to be truly & correctly made.

GEO. M. POWELL, *Clerk.*

299 Filed Feb'y 16th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Report of sale.

To the honorable E. G. Peyton, chancellor of the 9th chancery district of Mississippi, sitting in and for Yazoo County:

The undersigned, appointed a special commissioner at the January special term, 1877, of your honorable court to execute the decree in a cause therein pending, in which J. P. Benson et al. were complainants & Nelson, Lamphier & Co. et al. were defendants, begs leave to submit the following as his report:

Your commissioner, in accordance with said decree, took possession of the real estate involved in said cause, & all the personal property in controversy that he could find, to wit, twenty head of mules, one wagon, & a lot of old gearing, tools, farming utensils, &c., and, after giving the required notice, sold the same at public auction to the highest bidder on
300 the 19th day of February, 1877, to the following persons, for the following prices, & in the following order: One mule to I. G. Hollingsworth, for $100; one to F. Barksdale, for $100.50; one to J. Wallerstein, for $80.50; one to W. Z. McCrackin, for $117.00; one to I. G. Hollingsworth, for $100; one to Campbell Bull, for $99.00; one to same party, for $104.00; one to J. F. Powell, for $40.75; one to Charles Mooney, for $14.00; one to J. B. Cunningham, for $74.00; one to W. E. Phillips, for $50.00; one to R. L. Ferris, for $25.50; one to J. Wallerstein, for $91.50; one to S. G. Bedwell, for $55.00; one to C. M. Winstead, for $70.00; one to M. W. Smith, for $66.50; one to J. F.

Powell, for $65.00; one to Elim Parish, for $80.00; and one to W. E. Phillips, for $70.00; and the wagon, tools, utensils, &c., to R. G. Hudson, for $25.00, aggregating the sum of $1,428.20.

Your commissioner sold the following lands in the following lots & order, J. P. Benson, C. C. Ewing, & R. G. Hudson being the
301 joint purchasers of the whole of it, at the following prices:

The SW. ¼	sec.	9,	T.	9,	R.	4	W.,	160	acres,	at	10	cts	$16 00
" SE. ¼	"	"	"	"	"	"	"	"	"	"	"	"	16 00
" SW. ¼	"	10,	"	"	"	"	"	"	"	"	"	"	16 00
" SE. ¼	"	"	"	"	"	"	"	"	"	"	"	"	16 00
" S. ½ of NW. ¼	"	"	"	"	"	80	"	"	"	"	"	"	8 00
" NE. ¼	"	"	"	"	"	160	"	"	"	"	"	"	16 00
" NW. ¼	"	11,	"	"	"	"	"	"	"	"	"	"	16 00
" W. ½ of NE. ¼	"	"	"	"	"	80	"	"	"	"	"	"	8 00
" SW. ¼	"	"	"	"	"	160	"	"	"	"	"	"	16 00
" SE. ¼	"	"	"	"	"	"	"	"	"	"	"	"	16 00
" NW. ¼	"	15,	"	"	"	"	"	"	"	5	cts		8 00
" NE. ¼	"	"	"	"	"	"	"	"	"	"	"	"	8 00
" E. ½ of SE. ¼	"	"	"	"	"	80	"	"	"	"	"	"	4 00
" NW. ¼	"	14,	"	"	"	160	"	"	"	10	cts		16 00
" NE. ¼	"	"	"	"	"	"	"	"	"	25	"		40 00
" SW. ¼	"	"	"	"	"	"	"	"	"	$1.00	"		160 00
" SE. ¼	"	"	"	"	"	"	"	"	"	10	cts		16 00
" NW. ¼	"	23,	"	"	"	"	"	"	"	5	cts		8 00
" NE. ¼	"	"	"	"	"	"	"	"	"	"	"	"	8 00
" SE. ¼	"	"	"	"	"	"	"	"	"	"	"	"	8 00
" NW. ¼	"	24,	"	"	"	"	"	"	"	"	"	"	8 00
" SW. ¼	"	"	"	"	"	"	"	"	"	"	"	"	8 00
Total proceeds of land													$436 00

Your commissioner states that the first six mules sold as reported
302 above were seized by the coroner under a writ of attachment issued from the circuit court of said county at the suit of Jas. D. Partee against T. A. Nelson, & that your commissioner bounded them as claimant & sold said six mules for $597.00, and holds the same subject to the result of the suits in reference to same.

Your commissioner would state that there is due him the following account for expenses, services, &c.:

Jan'y 18, '77, expenses in getting up, driving, & feeding mules...	$42 00
" " " ferriage at Satartia & Yazoo City	6 60
" " " rope to tie mules	1 50
To hire horse	15 00
" com'n	17 01
" report of com'r	3 00
" deed of com'r	2 00
" boarding 17 mules at A. J. Collins', from Jan'y 18 to Feb'y 19, '77, at 56c. per day	304 64
" " 1 mule " " for 13 days	7 28
" " 2 " " " 14 "	15 68
Total amount	$409 71

One of the mules taken into my possession was so much disabled as to be utterly worthless, & was disposed of without price.

303 H. L. TAYLOR,
Trustee & Commissioner.

Filed Ap'l 16th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Order confirming report of sale.

WEDNESDAY, *April 18th*, 1877.

J. P. BENSON ET AL. vs. NELSON, LAMPHIER & CO. ET AL. } No. 896.

Ordered, That the motion of H. L. Taylor, commissioner in this case, for confirmation of his report of the sale made by him of the real and personal property involved in this cause, be, and the same is hereby, sustained and said report confirmed.

Report of receiver.

Chancery court, April term, A. D. 1877.

J. P. BENSON ET AL. vs. NELSON, LAMPHIER & CO. ET AL. }

To the honorable E. G. Peyton, chancellor, &c.:

The undersigned, heretofore appointed a receiver in the above-stated cause, respectfully reports as follows:

304 That he has fully accounted for and paid over the amount of money collected by him, of which he files herewith his account, which he prays may be allowed, and that he may be hence discharged with his reasonable commissions, &c.

S. H. CHILDRESS,
By E. DRENNING.

Filed April 18th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Account.

"No Mistake" plantation, in a/c with S. H. Childress (rec'v'd).

CR.

1876.

6 b. c. rec'd from Phil. White & Miles Johnson, marked (N), net	244 52
4 b. c., Dave Williams, (D), for rent, net	164 08
4 b. c., Mike Smith and Allen Grinsted, rent, (M), net	164 85
3 b. c., Simon Cole, rent a/c, (C)	122 18
	695 63

3 b. c., Henry Osborn, H. O., a/c sales not ret'd, sales not rendered.
3 b. c., Lize Hammond, L. H., a/c sales not returned, " " "

305 DR.

To amount taxes paid	328 61	
" services as rec'v'r	100 00	
6 b. c. to be accounted for.		
Bal. due as per above statement	267 02	
E. & O. E.	695 63	695 63
By bal. due "No Mistake" this day		267 02
Proceeds 6 bales cotton		257 22

6 b. c. to be accounted for		524 24
By receipts of R. Bowman		524 24
		0 0

Satartia, Miss., Jan'y 9th, 1876.

Error in acc't of six b. c	30 00
Due damages on taxes	33 73
	$63 73

VOUCHERS.

No. sale, 468.] [List No. 56.

Sales by Craig & Hogan of six bales cotton received October 30, 1876, by steamer Clarksville, and sold for account of S. H. Childress.

Sold to Lucas E. More, Oct. 31, 1876:

Marks:		384		
		386		
		388		
		391		
		383		
(N)		423		
306	S. H. C.	Six 2,355 lbs., @ 11⅜c		267 88
	6	(E)		

CHARGES.

Freight, $6.00; charges, $1.50, as per B. L	7 50	
River or r'r'd ins. on $50 per bale, @ 1 p'r ct	3 00	
Fire ins. on sale, @ ⅜ " "	1 00	
Drayage, storage, labor, & weighing, @ 75 cts. p. b	4 50	
Mending and putting in order	* * *	
Brokerage on sale, @ ¼ per cent	67	
Commission on 2½ per cent	6 69	
		23 36
Net proceeds		$244 52

E. & O. E.
New Orleans, Nov. 3, 1876.

CRAIG & HOGAN,
Per L. T. VILLARS.

No. sale, 766.] [List No. 75.

Sales by Craig & Hogan of four bales cotton, received November 13th, 1876, by steamer Clarksville, and sold for account of S. H. Childress.

Sold to C. & G. Green & Co., No. 21, 1876:

Marks: 389
424

Two, 813 lbs., @ 11½c 93 49

(D)

S. H. C. 403
4 369

Two, 772 " @ 11¼c 86 85

180 34

307 CHARGES.

Freight, $4.00; charges, $1.62, as per B. L.....	5 62	
River or r'r'd ins. on $50 per bale, @ 1 per ct.....	2	
Fire ins. on sale @ ⅜ " "	68	
Drayage, storage, labor, & weighing, @ 75 cts. p. b.....	3 00	
Mending and putting in order.....	* * *	
Brokerage on sale, @ ¼ per cent.....	45	
Commission on , @ 2½ per cent.....	4 50	
		16 26

Net proceeds..... $164 08

E. & O. E.

New Orleans, Nov. 25th, 1876.

CRAIG & HOGAN,
Per L. T. VILLARS.

No. sale, 770.] [List No. 76.

Sales by Craig & Hogan of four bales of cotton, received November 13, 1876, by steamer Clarksville, and sold for account of S. H. Childress.

Sold to C. & G. Green & Co., Nov. 21, 1876:

Marks:

395
365
(M) 393
S. H. C. 457

4 (four) 1, 610 lbs., @ 11¼c 181 13

CHARGES.

Freight, $4.00; charges, $1.62, as per B. L.....	5 62	
River or r'r'd ins. on $50 per bale, @ 1 per ct.....	2	
Fire ins. on sale, @ ⅜.....	68	
Drayage, storage, labor, and weighing, @ 75 cts. p'r b..	3 00	
308 Mending and putting in order.....	* * *	
Brokerage on sale, @ ¼ per cent.....	45	
Commission on , @ 2½ per cent.....	4 53	
		16 28

Net proceeds..... $164 85

E. & E. O.

New Orleans, Nov. 25, 1876.

CRAIG & HOGAN,
Per L. T. VILLARS.

No. sale, 768.] [List No. 75.

Sales by Craig and Hogan of three bales of cotton, received November 13, 1876, by steamer Clarksville, and sold for acc't of S. H. Childress.

Sold to C. & G. Green & Co., Nov. 21st, 1876:

Marks:

	371
(C)	403
S. H. C.	420

3 (three) 1,194 lbs., @ 11¼c..... 134 32

CHARGES.

Freight, $3.00; charges, $1.20, as per B. L.....	4 20	
River or r'r'd ins. on $50 per bale, @ 1 per ct	1 50	
Fire ins. on sale, @ ⅜ "	50	
Drayage, storage, labor, & weighing, @ 75 cts. per b.....	2 25	
Mending & putting in order.....	* * *	
Brokerage on sale, @ ¼ p'r cent.....	33	
Commission on , @ 2½ p'r cent.....	3 36	
		12 14
Net proceeds.....		$122 18

E. & O. E.

New Orleans, Nov. 25, 1876.

309 CRAIG & HOGAN,
Per L. T. VILLARS.

No. sale, 1759.] [List No. 138.

Sales by Craig & Hogan of three bales of cotton, received Nov. 28, 1876, by steamer Clarksville, and sold for account of S. H. Childress.

Sold to C. & G. Green & Co., Jan'y 5, 1877:

Marks:

	3 b. c.
H. O.	428
S. H. C.	408
	428
1,264	12¾..... 161 16

E.

CHARGES.

Freight, $3.00; charges, 75 , as per B. L.....	3 75
River or r'r'd ins. on $50 per bale, @ 1 p'r ct..... ...	1 50
Fire ins. on sale, @ ½ "	80
Drayage, storage, labor, & weighing, @ 75 cts. p. b.....	2 25

Mending & putting in order..... * *
Brokerage on sale, @ $\frac{1}{4}$ p'r ct..... 40
Commission on , @ $2\frac{1}{2}$ p'r ct..... 4 03
1, 273

Net proceeds..... $148 43

E. & O. E.

New Orleans, Jan'y 13, 1877.

CRAIG & HOGAN,
Per H. F. WARNER.

No. sale, 1760.] [List No. 138.

310 Sales by Craig & Hogan of three bales of cotton, received November 28, 1876, by steamer Clarksville, and sold for account of S. H. Childress.

Sold to C. & G. Green & Co. Jan'y 5th, 1877:
Marks:
3 b. c.
(L) 448
S. H. C 400
412

1, 260, 12..... ..... 151 20
E.

CHARGES.

Freight, $3.00; charges, $.75, as per B. L..... 3 75
River or r'r'd ins. on $50 per bale, @ 1 per cent..... 1 50
Fire ins. on sale, @ $\frac{1}{2}$ " 75
Drayage, storage, labor, & weighing, @ 75 cts. p. b..... 2 25
Mending and putting in order..... * *
Brokerage on sale, @ $\frac{1}{4}$ per cent..... 38
Commission on , @ $2\frac{1}{2}$ per cent..... 3 78
12 41

E. & O. E. Net proceeds..... ..... $138 79
New Orleans, Jan'y 13th, 1877.

CRAIG & HOGAN,
Per H. F. WARNER.

No. 836.] SHERIFF'S OFFICE, YAZOO COUNTY, MISS.,
Dec. 22*nd*, 1876.

Received of "No Mistake" plantation $294.84, State, county, and teachers' fund taxes for the fiscal year 1876, as per following statements and descriptions of real and personal property, to wit:

311 State, county..... $294 84

Division of section.	S.	T.	R.
S. ½	9	9	4 W.
E. ½ & SW. ¼ & S. ½ of NW. ¼	10	"	"
W. ½ of NE. ¼ & SE. ¼ & W. ½	11	"	"
All	14	"	"
N. ½ & E. ½ of SE. ¼	15	"	"
E. ½ & NW. ¼	23	"	"
W. ½	24	"	"

Taxes	294	84
Damages	33	73
	$328	61

H. L. TAYLOR,
Sheriff & Tax Collector Yazoo County,
By M. W. SMITH, *D'p'y.*

Received Jan'y 11th, 1877, of S. H. Childress, his draft of this date on Craig & Hogan, of New Orleans, to my order for two hundred and sixty-seven ^{02} dollars collected by said Childress, as trustee, in J. P. Benson et al. vs. Nelson, Lamphier & Co. in ch. court of Yazoo County, of rents on "No Mistake" & "Tyrone" plantations, said draft when paid to be for above amount.

ROBERT BOWMAN.

312 In chancery court of Yazoo County, Mississippi.

J. P. Benson et al.
vs.
Nelson, Lamphier & Co.

Rec'd of S. H. Childress, receiver in above case, two hundred and fifty-seven $\frac{22}{100}$ dollars by his draft on Craig & Hogan of this date. When paid to be for said am't.

Feb'y 2d, 1877.

ROBERT BOWMAN.

Exceptions to report of receiver.

J. P. Benson et al.
vs.
Nelson, Lamphier & Co.

Robert Bowman, to whom, for him, himself, and J. P. Campbell, the proceeds of the cotton collected by S. H. Childress, the receiver in this case, comes and excepts to the report of said receiver, and shows:

1st. That said receiver has collected from cotton $982.00, and paid to this exceptant only $524.22. That said receiver negligently failed to pay the taxes on the lands involved in this suit which he had means in his
313 hands to pay the same, and thereby incurred damages to the amount of $33.73, which he has erroneously credited himself with;

that said receiver has erroneously *charged* himself with $100.00 commissions; that said receiver reports six bales of cotton, the sales not returned and fails to return over & deliver the same to this exceptant.

R. BOWMAN.

Filed Ap'l 18th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Decree on report of rec'v'r & exceptions.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. ET AL.

WEDNESDAY, *April 18th*, 1877.

This day came on to be regularly heard the *motion* of Samuel H. Childers, as receiver in the above case, and the exceptions of Robert Bowman thereto, and the court being fully satisfied in the premises, finds: That said Robert Bowman is entitled to the proceeds of the cotton received & sold by said Samuel H. Childers as receiver.

314 2nd. That said Childers has failed to pay said Robert Bowman thirty dollars of the proceeds of cotton received by said Childers.

3rd. That said Childers wrongfully and illegally paid the sum of thirty-three $\frac{73}{100}$ dollars damages on taxes of lands in this suit, and that he is liable for said sum to said Robert Bowman.

4th. That, including said sum of thirty dollars and said sum of thirty-three $\frac{73}{100}$ dollars, there is now due by said Childers as receiver, or under color of receiver as aforesaid, the sum of sixty-three $\frac{73}{100}$ dollars to said Robert Bowman.

It is therefore ordered, adjudged, and decreed that said Samuel H. Childers pay to said Robert Bowman said sum of sixty-three $\frac{73}{100}$ dollars with interest at the rate of 6 % per annum from the date of this decree within twenty days, and in default thereof that execution issue for said sum with interest against said Childers.

It is further ordered, adjudged, and decreed that said Samuel H.
315 Childers pay all the costs of this proceeding, including the costs in the proceedings *including the costs in the proceedings* of said Robert Bowman & J. A. P. Campbell, for a rule against said Childers as part of this cause.

It is further ordered, adjudged, and decreed that the rights, interests, and claims of any party or parties against said Samuel H. Childers under color of his office as receiver, shall not in any manner whatever be affected, impaired, or prejudiced by this decree.

E. G. PEYTON, *Chancellor.*

Filed Ap'l 18th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Execution.

THE STATE OF MISSISSIPPI,
Yazoo County:

To the sheriff of said county, greeting:

We command you that of the goods and chattels, lands and tenements, of Samuel H. Childress, of your county, you cause to be made the

316 sum of sixty-three & $\frac{73}{100}$ ($63.73), which Robert Bowman, lately in our chancery court of said county, has recovered against said S. H. Childress, as receiver, in a certain cause in said court wherein J. P. Benson et al. were complainants and Nelson Lamphier & Co. et al. were defendants for damages which said Bowman has sustained by reason of the non-performance of certain assumptions and liabilities by said Childress as receiver aforesaid, to the said Robert Bowman lately made, with interest on the said sum at the rate of six per cent. per annum from the 18th day of April, 1877, until paid; also the sum of eleven & $\frac{80}{100}$ dollars ($11.80) for costs in that behalf expended, whereof the said S. H. Childress stands convicted, as appears to us of record in our said court; and that you have the said moneys before our said court on the second Monday of October next, 1877, at the court-room thereof, in Yazoo City, county and
317 State aforesaid, to render unto said Robert Bowman for said damages and costs; and have you then and there this writ.

Witness, G. M. Powell, clerk of said court, and the seal of said court hereto affixed, at Yazoo City, said county and State, this 22d day of May, A. D. 1877.

[SEAL.]

G. M. POWELL, *Clerk*,
By N. T. PUGH, *D. C.*

Cost bill.

1876				
Dec'r 15.	Filing peti. to compel rec'v'r to pay, &c.		05	
" " "	order of chancellor on same		05	
" 20.	Sheriff's return on copy of same		10	4 00
1877.				
Jan'y 5.	Citation to S. H. Childress		75	
" "	Sh'ff's return on same		10	4 00
" 8.	M. & O. for rule vs. receiver		30	
Ap'l 18.	Filing report of "		05	
" "	Exceptions to same		05	
" "	Decree on exceptions, file, & record	1	25	
May 22.	Issuing execution		75	
" "	Sheriff's return on same		10	
	Tax on cost		25	
		$3	80	8 00

Rec'd May 22nd, 1877.

H. L. TAYLOR, *Sh'ff.*

Satisfied May 28th, 1877.

H. L. TAYLOR, *Sheriff.*

318 *Order to withdraw notes from file.*

TUESDAY, *October* 16*th*, 1877.

J. P. BENSON ET AL.
vs.
NELSON, LAMPHIER & CO. } No. 896.

Ordered, That the motion of J. P. Benson, for leave to withdraw the

original notes on file in this cause, as Exhibits B & C to complainant's bill, be, and the same is hereby, sustained, upon said Benson filing with the papers in this cause copies of said notes.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court in and for the county and State aforesaid, do hereby certify that the foregoing and annexed eighty-seven pages contain a true and complete transcript of all the papers, pleadings, and proceedings in the above and foregoing stated cause in said court as fully and completely as the same appear and remains on file and
319 of record in our said court.

Given under my hand and the seal of said court at office in Yazoo City, county and State aforesaid, this 2nd day of June, A. D. 1879.

[SEAL.] G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

Exhibit K² to the supplemental bill is in the words and figures following, to wit:

320 H. L. Taylor, tax collector, deed to Benson & Ewing.

H. L. Taylor, tax collector of Yazoo County, Mississippi, have this day, according to law, sold the following land, there being no other property found on which to levy and make the taxes due on said lands, to wit: S. ½ sec. 9, E. ½ & SW. ¼ & S. ½ of NW. ¼ sec. 10; N. ½ of NE. ¼ & SE. ¼ & W ½ of sec. 11; all sec. 14; N. ½ & E. ½ of SE. ¼ sec. 15; E. ½ & NW. ¼ sec. 23, W ½ sec. 24, T. 9, range 4 west, for taxes assessed to the reputed owner thereof for the year A. D. 1875, when J. P. Benson & C. C. Ewing became the best bidder at the sum of $383.49 *or dollars.* I therefore sell and convey said lands to the said J. P. Benson & C. C. Ewing, his heirs and assigns forever.

Given under my hand and seal this the 3rd day of January, A. D. 1876.

H. L. TAYLOR. [SEAL.]

THE STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, G. M. Powell, clerk of the chancery
321 court of said county, H. L. Taylor, who acknowledged that as said sheriff of said county he signed, sealed, and delivered the foregoing deed on the day and year therein written as his act and deed.

Given under my hand and seal of said courts this 17th day of Jan'y, A. D. 1876.

[SEAL.] GEO. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

Filed Jan'y 17th, 1876. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Recorded Dec. 14, 1878.

By J. W. POWELL.

Filed for record 10 a. m. Dec. 9th, 1878.

G. M. POWELL, *Clk.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, clerk of the chancery court of said county, do hereby certify that the foregoing one page contain a true & correct copy & transcript of the deed from H. L. Taylor, tax collector, to Benson & Ewing, together with the acknowledgments, proofs, & certificates thereof as
322 fully & completely as the same appears & remains of record in my office in book Y Y, on pages 688 & 689 of the records of deeds of said county.

Given under my hand & seal of office this 16th day of May, A. D. 1879.

[SEAL.] G. M. POWELL, *Clerk.*

Exhibit L[2] to said supplemental bill is in the words and figures following, to wit:

323 Jas. P. Benson, deed to C. C. Ewing et al.

This indenture, made & entered into this the 3d day of July, A. D. 1877, by and between J. P. Benson, party of the first part, and Charles C. Ewing & Robert G. Hudson, parties of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of five thousand and five hundred dollars, to be paid by the parties of the second part as follows: twenty-seven hundred and fifty dollars on the first day of next January, & twenty-seven hundred & fifty dollars on the first day of January, 1879, as evidenced by the two promissory notes of the parties of the second part for said sums, the one due the first of next January, bearing ten per cent. interest per annum after maturity, & the one due Jan'y the first, 1879, bearing ten per cent. interest per annum
234 from date granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell and convey, to the parties of the second part all my right, title, & interest in and to the following lands, situated in Yazoo County, Mississippi, to wit: S. ½ of section nine (9); NE. ¼ & S. ½ of NW. ¼ & S. ½ of section ten (10); the W. ½ of NE. ¼ & NW. ¼ & S. ½ of section eleven (11); all of section (14); N. ½ & E. ½ of SE. ¼ section (15); N. ½ & SE. ¼ of section twenty-three (23); west ½ of section twenty-four (24), township nine (9), range four west; also all my interest in a certain decree rendered by the chancery court of Yazoo County, Mississippi, in 1868, in which C. Todd was complainant and W. B. Partee et al were defendants, purchased by the parties of the first & second part from E. Dreenning, administrator of C. Todd's estate. To have and to hold said property, together with the appurtenances, tenements, and hereditaments thereunto belonging unto the parties of the second
325 part, their heirs and assigns, forever in fee-simple; and the party of the first part hereby covenants and agrees to forever warrant and defend the title to the aforesaid property against the claims of himself, or any one claiming the same by, through, or under him, but no other.

Witness my hand & seal of the party of the first part this day and year first above-written, after the interlineation on the first page of the words, "part all my right, title, and interest in & to."

J. P. BENSON. [SEAL.]

Before me, Thos. B. Sykes, mayor of Aberdeen and ex-officio J. P. of the County of Monroe, State of Mississippi, personally appeared Joseph P. Benson, who signed, sealed, and delivered the foregoing deed, and acknowledged that he signed the same for the purpose therein mentioned and contained.

Witness my hand and seal the 3rd day of July, A. D. 1879.

THOS. B. SYKES, [SEAL.]
Mayor & Ex-officio J. P.

326 Filed 9 a. m., July 23d, 1877. Record July 24th, 1877.
GEO. M. POWELL, *Clk.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, G. M. Powell, cl'k of the chancery court of said county, hereby certify that the foregoing 3 pages contain a true & correct copy & transcript of the deed from Jas. P. Benson to C. C. Ewing et al., together with the acknowledgement, proofs, & certificates thereof, as fully and completely as the same appears & remains of record in my office in book Y Y, on pages 205 & 206 of the record of deeds of said county.

Given under my hand and seal of office this 16th day of May, A. D. 1879.

[SEAL.] GEO. M. POWELL, *Clerk.*

Exhibit M[2] to said supplemental bill is in the words & figures following, to wit:

327 WEDNESDAY, *July 7th*, 1875.

The tax-rolls were taken up for examination and equalization, to be continued from day to day while the board is in session.

THURSDAY, *July 8th*, 1875.

The board resumed the examination and equalization of the real and personal rolls.

FRIDAY, *July 9th*, 1875.

The board resumed the examination and equalization of the real and personal rolls.

SATURDAY, *July 10th*, 1875.

The real and personal rolls, after examination, were received and approved, and warrants to be issued to T. D. Mowin out of their respective funds for assessing to the am't of $\frac{1}{3}$, as per his %, to wit:

General county	fund,	8414.86	138	29
Judiciary	"	103.71	34	57
328 Court-house & jail	"	165.94	55	31
Teachers'	"	331.89	110	63
School-house	"	41.48	13	83

Ordered, that a tax of five (5) mills on the dollar of the assessed value of all property liable to taxation be, and the same is hereby, levied for general county purposes; also, one and a quarter ($1\frac{1}{4}$) mills on the dollar of

the assessed value of all property liable to taxation be, and the same is hereby, levied for judiciary purposes; also, two mills on the dollar of the assessed value of all property liable to taxation, as a special tax, be, and the same is hereby, levied for court-house & jail purposes; also four (4) mills on the dollar of the assessed value of all property liable to taxation be, and the same is hereby, levied as teachers' fund; also one-half ($\frac{1}{2}$) a mill on the dollar of the assessed value of all property liable to taxation
329 be, and the same is hereby, levied as school-house and contingent fund, except the taxable property in Yazoo City, which said property is exempt from all school taxes for county purposes—making a total, $12\frac{3}{4}$. All voting age.

TUESDAY, *August 10th*, 1875.

Ordered that the minutes of the last meeting be amended as to the order of the board levying the county tax as follows, to wit: That said tax so levied is hereby made payable in legal currency of the United States, or in the warrants of this board, drawn upon the aforesaid funds respectively. And it is further ordered that no warrants be received bearing date subsequent to the day of November, for the year 1875.

MONDAY, *November 8th*, 1875.

The certificates of the auditor of public accounts, stating that he had examined and accepted the assessment rolls of Yazoo County was read and ordered to be filed.

MONDAY, *December 6th*, 1875.

330 Ordered that all warrants issued to the 1st January, 1876, be received in payment of taxes now due.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court and ex officio clerk of the board of supervisors, in and for the county and State aforesaid, do hereby certify that the foregoing and annexed two pages and the upper portion of this page contain true and perfect copies of the orders of said board of supervisors, made and entered at the times, on the days, and in the year of their dates respectively, as above given to each, in relation to receiving, correcting, & allowing the assessment of the lands of said county for the year 1875, the equalization of, or as to hearing objections to the assessment of said year, and the levying of taxes for said year, as fully and completely as the same appears & remains of record in my said office
331 in Minute Book No. 1, on pages 377, 378, 382, 385, 401, & 409 of the minutes & proceedings of said board.

I further certify that after due and diligent examination of the minutes of said board, I can find no orders on the subjects named herein, in said minutes, for said year 1875, except those copied above & herein referred to.

Given under my hand and the seal of said board of supervisors, at office in Yazoo City, county & State aforesaid, this 21st day of May, A. D. 1879.

[SEAL.]

G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

Exhibit N² to said supplemental bill is in the words & figures following, to wit:

332 THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. D. Morrin, assessor for Yazoo County, for the year 1875, hereby certify that the preceding 206 pages is a true and correct assessment of all the real estate in the county of Yazoo, State of Mississippi, in accordance with law.

J. D. MORRIN, *Assessor.*

Sworn to and subscribed before me this the 5th day of July, 1875.
J. M. DICKSON,
Chancery Clerk.

Received and approved by the board of supervisors on the 10th day of July, 1875.

S. G. BEDWELL,
Pres't B. S.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court, and ex officio clerk of the board of supervisors, in and for the county and State aforesaid,
333 do hereby certify that the above and foregoing is a true and correct copy of the certificate attached to the land assessment roll of said county by the assessor thereof, for the year 1875, together with the proofs thereof, and also of the certificate by the president of said board of the approval of said assessment-roll, as fully and completely as the same appear & remain of record in my office, on the original land assessment roll of said county for the year 1875.

Given under my hand and the seal of said board of supervisors at office in Yazoo City, county and State aforesaid, this 22d day of May, A. D. 1879.

[SEAL.] G. M. POWELL, *Clerk.*
By N. T. PUGH, *D. C.*

Exhibit O² to said supplemental bill is in the words and figures following, to wit:

334

Owner's name.	Division of section.	Section.	Township.	Range.	Number of acres now taxable.	Value per acre.	Total value of lands now taxable.	Amount of State tax on lands.	
No Mistake, Jas. Stewart.	S½	9	9	4 W.	320	5	1,600	11.60	320
Unknown. No Mistake, Jas. Stewart	E. ½ & SW. ¼ & S. ½ of NW. ¼	10	"	"	560	5	2,800	20.30	560
No Mistake, Jas. Stewart	N½ of NE. ¼ & SE. ¼ & W. ½	11	"	"	560	5	2,800	20.30	560
No Mistake, Jas. Stewart. Partee Place	All	14	"	"	636	5	3,180	23.055	636
Partee Place, James Stewart.	No. ½ & E. ½ of SE. ¼	15	"	"	400	5	2,000	14.50	400
Partee Place.	E. ½ & NW. ¼	23	"	"	480	5	2,400	17.40	480
No Mistake Place.	W. ½	24	"	"	320	5	1,600	11.60	320

335 STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court and ex-officio clerk of the board of supervisors in & for the county & State aforesaid, do hereby certify that the foregoing & annexed is a true and correct copy of that part of the land-assessment roll of 1875 for Yazoo County embracing the lands described therein. And I further certify that the entries in the left-hand column, under the heading "Owners' name," are in pencil on said roll, and there is no means in my power of knowing when or by whom these entries in pencil were made. They evidently do not appear to have been made, & I think were not made, by the assessor who returned said roll for 1875.

Given under my hand and the seal of said board of supervisors at office in Yazoo City, county & State aforesaid, this 22d day of May, A. D. 1879.

[SEAL.] G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

336 Exhibit P[2] to said supplemental bill is in the words and figures following, to wit:

337 *Extract from last will and testament of James Dick, deceased, filed and probated 22d March*, 1849.

* * * * * * *

To my niece, Sarah D. Todd, wife of William B. Partee, of New Orleans, and her heirs I give and bequeath:

1st. My plantation, commonly called "No Mistake" plantation, near Satartia, Yazoo County, State of Mississippi, with all the negroes, horses, mules, cattle, buildings, and farming utensils that may be found on said estate at the time of my death and belonging to me.

2nd. I give and bequeath to the said Sarah D. Todd and to her heirs about six thousand acres of land, situated in this State, and entered by E. Lawrence Brushcae in my name.

This bequest is made to Sarah D. Todd, wife of William B. Partee, upon the following conditions, under the penalty in case of non-compliance of loss of all the above property:

The first of said conditions is that the said Sarah D. Todd, wife
338 of the said William B. Partee, shall within the next ensuing
months after my death pay to Miss Elizabeth Calhoun, of Monroe County, State of Tennessee, and to Nathaniel Calhoun, and to Christopher Calhoun, his brother, children of Margaret Todd, wife of Charles Calhoun, and residing in Monroe County, Tennessee, the same to each of twelve thousand dollars; that is to say, to Miss Elizabeth Calhoun the sum of twelve thousand dollars, and to Christopher Calhoun twelve thousand dollars, and in the case of the death of either or of any of them without issue then the sum or sums coming to said parties or their heirs to be given to the survivor or survivors in equal proportion.

The second of said conditions is that the said Sarah D. Todd & her heirs shall pay to Christopher Todd and to Sarah, his wife, my sister, one thousand thousand per annum during the life of either, payable as they or the survivors may require it.

339 Exhibit Q² to said supplemental bill is in the words & figures following, to wit:

340 EDWARD DRENNING, ADM'R OF CHRISTOPHER TODD, DEC'D, *vs.* WILLIAM B. PARTEE AND SARAH D. PARTEE. } Ch. 146.

This cause having been brought on this day to be heard upon the bill of complaint filed therein, taken as confessed by the said defendants, William B. Partee and Sarah D. Partee, and the exhibits to said bill and upon the report of George A. Gibbs, heretofore appointed by this court to take and state an account of the amount due to said complainant's intestate in his life-time under the last will and testament of James Dick, deceased, mentioned and set forth in said bill of complaint, and on reading and filing said report, from which it appears that there was due to complainant's intestate in his life-time and at the time of his death the sum of seven thousand six hundred and eighty $^{0}_{4}$ dollars, and said report being found in all things correct, the court doth order
341 adjudge, and decree that said report and all things contained therein is, and the same is hereby, ratified and confirmed. And the court, being now fully advised in the premises, doth order, adjudge, and decree the aforesaid sum of seven thousand six hundred and eighty $^{0}_{4}$ dollars, so found due to said complainant's intestate, in his life-time, is, under and by the provisions of the last will and testament of James Dick, deceased, mentioned in said bill of complaint, a lien and charge upon all the lands of said defendants devised to said Sarah D. Partee, under and by said last will and testament of said James Dick, deceased, known as the "No Mistake plantation," near the town of Satartia, in the county of Yazoo, and State of Mississippi. And the court doth further order, adjudge, and decree that the aforesaid lands, known and designated as the No Mistake, is and doth stand charged with the payment of the aforesaid sum of seven
342 thousand six hundred & eighty $^{0}_{4}$ against all liens and encumbrances created therein by the said defendants since the death of said James Dick, deceased, on the day of , 1849, and against all other judgments and decrees rendered against said defendants. And the court doth further order, adjudge, and decree that said defendants pay to said complainant the aforesaid sum of seven thousand six hundred and eighty $^{0}_{4}$ dollars so found due within thirty days from the date of this decree, and in default thereof that the aforesaid lands, known and described as the No Mistake plantation, or so much thereof as may be sufficient to be sold for the payment of the aforesaid sum of seven thousand six hundred & eighty $^{0}_{4}$ dollars so due to said complainant, and that said lands be sold for cash at public auction, upon giving the notice of the time and place of sale as required by law.

343 It is further ordered, adjudged, and decreed that the sheriff of Yazoo County be appointed a commissioner to execute this decree in the sale of said lands, and that he execute a deed therefor to the purchaser on the said sale, and that from the proceeds arising from the sale of said lands said commissioner shall pay the costs of said sale and then pay to said complainant or his solicitors the aforesaid sum of seven thou-

sand six hundred and eighty $\frac{0}{4}$ dollars, together with legal interest thereon, and that the said commissioner report all his proceedings as such to the next term of this court. It is further ordered, adjudged, and decreed that said defendants pay the costs of this suit.

J. A. P. CAMPBELL,
Chancellor.

JUNE 8TH, 1868.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court in and for the
344 county and State aforesaid, do hereby certify that the foregoing and annexed three pages contain a true and correct copy and transcript of the decree of the chancery court of said county in the cause therein stated, but originally styled on the general docket of said court Christopher Todd vs. William B. Partee and Sarah D. Partee, as fully and completely as the same appears and remain of record in my office in minute book No. 2, on pages 38 & 39 of the minutes and proceedings of said court.

Given under my hand and the seal of said court at office in Yazoo City, county and State aforesaid, this 2d day of June, A. D. 1879.

[SEAL.] G. M. POWELL, *Clerk*,
By N. T. PUGH, *D. C.*

Exhibit R² to said supplemental bill is in the words & figures following, to wit:

345 W. B. Partee et al. (p'r com'r). Deed to Hudson & Ewing.

Whereas in the circuit court of Yazoo County, State of Mississippi, in a certain cause therein pending, on the day of May, 1868, wherein E. Drenning, administrator of the estate of Christopher Todd, deceased, was complainant, and William B. Partee et al. were defendants, being No. 146 on the general chancery docket of said court, it was ordered, adjudged, and decreed that the sheriff of Yazoo County be appointed a commissioner to carry out the provisions of said decree rendered in said court, and to sell the lands in the bill of complaint mentioned, in the same manner provided by law for sheriff's sale of lands under execution at law. And whereas I, H. L. Taylor, sheriff of Yazoo County, did give notice by advertisement published in the Yazoo Sentinel, a newspaper published in said county, for the time prescribed by law,
346 that I would sell said lands at the court-house door of said county on Monday, April 15th, 1878, within the hours prescribed by law, at public auction to the highest bidder for cash, at which time and place Robert G. Hudson and C. C. Ewing became the purchasers of the following lands, lying and being in Yazoo County, State of Mississippi, to wit: S. $\frac{1}{2}$ of section 9; NE. $\frac{1}{4}$ & S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ of section 10; W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ & NW. $\frac{1}{4}$ & S. $\frac{1}{2}$ of section 11; all of section 14; N. $\frac{1}{2}$ & E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 15; N. $\frac{1}{2}$ & SE. $\frac{1}{4}$ of section 23, and W. $\frac{1}{2}$ of section 24, all in township 9, range 4 west, at and for the sum of two hundred and ninety-three dollars, which said lands were sold in lots not exceeding one hundred and sixty acres. Now, by virtue of the premises and in consideration of

353 UNITED STATES OF AMERICA,
Southern District of Mississippi, sc.:

The President of the United States to the marshal/ of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summon E. Drenning, as executor of James Stewart, deceased, and administrator of Christopher Todd, deceased; Robert G. Hudson, O. H. McCall, Isaac Brown, & H. Spiget, citizens of said district, resident in Yazoo County, citizen' of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court on the first Monday in August next, to answer a bill in equity of revivor & supplement exhibited against them & others by The Canal Bank of Louisiana & others, in a certain cause pending in the said circuit court, wherein the said bank & others are complainants and William B. Partee & others are defendants, under docket No. 185, N. S., and unless they shall enter their appearances therein, in the clerk's office aforesaid, on or before the time specified above the said bill will be taken for confessed. And have then and there this writ, and how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 21st day of June, A. D. 1879, and in the 103' year of the Independence of the United States of America.

[SEAL.] J. M. McKEE, *Clerk.*

354 Said subpœna is endorsed as follows, to wit:

W. H. Mangum is hereby specially deputized to execute & return this process according to law.

THOS. W. HUNT,
U. S. Marshal.

Executed the within writ June 30th, 1879, on R. G. Hudson, Edward Drenning, and O. H. McCall by delivering to each one of them a true copy of the same in person. Spiget & Brown not found.

T. W. HUNT,
U. S. Marshal,
By W. H. MANGUM,
Special D. M.

And on said 21st day of June the following notices of motion for appointment of a receiver are issued, to wit:

355 In the circuit court of the United States for the southern district of Mississippi, in equity.

THE CANAL BANK & OTHERS
vs. } 185, N. S.
WILLIAM B. PARTEE & OTHERS.

Jacob Schlanker, G. Hain, & E. Brunner, late merchants under firm-name and style of Jacob Schlenker & Co.; H. Spriget & Isaac Brown,

citizens of the said southern district, resident in Warren County, at Vicksburg.

You will please take notice that on Monday, the 21st day of July, A. D. 1879, or if the same for any cause cannot be heard on that day then on Tuesday, the 22d day of July, A. D. 1879, at chambers in the city of Oxford, in the northern district of Mississippi, we will move the Hon. R. A. Hill, judge, &c., for the appointment of a receiver to take possession of the lands set out in the bills filed in the above cause and trust-deed exhibited therewith, being the plantation called "No Mistake," "Tyrone," "Seven Guns," & Lake Dick, and formerly belonging to Sarah D.
356 Partee, in said county of Yazoo, and to lease the same & collect rents thereof, keep down taxes, &c.

CANAL BANK & OTHERS,
By NUGENT & HARLOW, *Sol's.*

To the marshal of the southern district of Mississippi to execute & return at once.

(Said notice is endorsed:)

Received June 29th, 1879. Executed upon J. Schlenker, H. Spigert, and Isaac Brown, by reading the within and handing them copies.

G. Hain & E. Brunner are not in this district. Hain is in New York & Brunner is gone North.

THOS. W. HUNT, *U. S M.*,
By WILLIAM PRICE, *D. U. S. M.*

357 In the circuit court of the United States for the southern district of Mississippi, in equity.

THE CANAL BANK & OTHERS
vs. } 185, N. S.
WILLIAM B. PARTEE & OTHERS.

To William B. Partee, Sarah D. Partee, James D. Partee, E. Drenning, executor of James Stewart & administrator of Christopher Todd, Robert G. Hudson, O. H. McCall, Isaac Brown, and H. Spieget, citizens of the the said southern district, resident in Yazoo County.

You will please take notice that on Monday, the 21st day of July, A. D. 1879, or if the same for any cause cannot be heard on that day then on Tuesday, the 22d day of July, A. D. 1879, at chambers, in the city of Oxford, in the northern district of Mississippi, I will move the Hon. R. A. Hill, judge, &c., for the appointment of a receiver to take possession of the lands set out in the bills filed in the above cause and the trust-deed exhibited herewith, being the plantation called "No Mistake," "Tyrone," "Seven Guns," and "Lake Dick," and formally belonging to Sarah
358 D. Partee, in said county of Yazoo, and to lease the same and collect the rent thereof, keep down taxes, &c.

CANAL BANK & OTHERS,
By NUGENT & HARLOW, *Sol's.*

To the marshal of the southern district of Mississippi to execute & return at once.

(Said notices endorsed:)

We hereby acknowledge service of the within writ and receipt of copy of same July 21st, 1879.

JAMES D. PARTEE.
SARAH D. PARTEE.
O. H. McCALL.

Executed on W. B. Partee July 9th, 1879, by delivering him a true copy of the same in person. Spigert & Brown not found.

T. W. HUNT,
U. S. Marsha'.
By W. H. MANGUM,
Special D. M.

359 In the circuit court of the United States for the southern district of Mississippi. In equity.

THE CANAL BANK & OTHERS
vs.
WILLIAM B. PARTEE & OTHERS. } N. S. 185.

To Joseph P. Benson, and Charles C. Ewing, individually and as administrator of S. S. Ewing, deceased, citizens of the northern district of Mississippi in Monroe County:

You will please take notice that on Monday, the 1st day of July, A. D. 1879, or if the same cannot be heard on that day for any cause, then on Tuesday, the 22d day of July, A. D. 1879, at chambers, in the city of Oxford, in the said northern district, we will move the Hon. R. A. Hill, judge, &c., for the appointment of a receiver to take possession of the lands set out in the bills filed in the above cause and trust-deed exhibited herewith, being the plantations called "No Mistake," "Tyrone," "Seven Gums," & "Lake Dick," and formally belonging to Sarah D. Par-
360 tee, in said county of Yazoo, & to lease the same, collect rents, keep down taxes, &c.

CANAL BANK & OTHERS,
By NUGENT & HARLOW, *Sol's.*

To the marshal of the northern district to execute & return at once.

(Said notices endorsed:)

Executed the within process in person, on the within-named J. P. Benson, and C. C. Ewing, by reading to each one and handing to them a true copy of this.

July 4th, 1879.

J. L. MORPHIS,
U. S. Marshal,
By R. O. BEAN, *Dep't.*

And on the 27th day of August, 1879, the following bond for rent was filed in said cause, to wit:

361 Know all men by these presents that we, R. G. Hudson, and C. C. Ewing, principals, and J. R. Regan, surety, all of Yazoo County, State of Mississippi, are held and firmly bound unto the Canal and Banking Company for the use of said company and the other complainants in the equity cause of Canal & Banking Company et al. vs. Partee et al., pending in the U. S. circuit court for the southern district of Mississippi, in equity in the penal sum of three thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, and executors, jointly, and severally by these presents. Signed by us and sealed with our seals this 6th day of August, A. D. 1879.

The condition of the above obligation is such that whereas, in the equity cause above named the said equity court (U. S. cir. court) did, on the 21st day of July, 1879, make an order or decree, directing that said Hudson and Ewing remain in possession of the lands and property described
362 in said decree, as the "No Mistake" plantation and "Tyrone" plantation, and the "Store House" and "Lake Dick" plantation, on condition that they would give bond and security to account for the fair rental value of said property in the event said court should decide on the final hearing of said cause that they should account for said rent (for all particulars connected therewith, said decree being now referred to): Now, in the event that said R. G. Hudson and C. C. Ewing shall account for the rental value of said property herein described for the year 1879, in the event, it may be so decided by the said court, said rental value to be the fair usual and customary rental value of said property, to be ascertained by the court, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof said parties have hereunto set their hands and affixed their seals this the 6th day of August, A. D. 1879.

R. G. HUDSON. [SEAL.]
C. C. EWING. [SEAL.]
J. R. REGAN. [SEAL.]

363 UNITED STATES OF AMERICA,
Southern District of Mississippi:

At Yazoo City, at said district, personally appeared before me the above-named J. R. Regan, who being by me duly sworn, says on oath he owns property in the State of Mississippi to the value of three thousand dollars, subject to execution over and over all his legal liabilities and exemptions.

J. R. REGAN.

Sworn to and subscribed before me this 25th day of August, A. D. 1879.

GEO. M. POWELL,
U. S. Commissioner.

And on the 6th day of September, A. D. 1879, the following decree appointing a receiver was made and entered as record in said cause, to wit:

364 In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK AND OTHERS
vs. } N. S. 185.
W. B. PARTEE ET ALS.

Be it remembered that the motion for a receiver in this cause, made by complainants, came on this day to be heard before the Hon. R. A. Hill, judge, at chambers, in the city of Oxford, Mississippi, and the notice for such motion having been duly given, it is ordered, adjudged, and decreed that said motion be, and the same is hereby, sustained, and that Dr. W. T. Williams, of Yazoo County, be, and he is hereby, appointed a receiver, and as such he is directed to take possession of all the lands set out in the trust-deed exhibited with the complainants' bill and described as follows: Lots 3, 4, 5, 6, 7, and 8, and 28¼ acres in lot one, section five, all section six, northeast quarter section eight, south half section nine, northeast quarter and south half northwest quarter section
365 ten, east half of northwest quarter section eleven, all section fourteen, west half of northeast quarter, northwest quarter and south half section eleven, north half and east half of southeast quarter section fifteen, north half and southeast quarter of section twenty-three, west half section twenty-four, township nine, range four west; also the north half section one, northwest quarter section two, northeast quarter section three, township nine, range five west; lot seven, section thirty-one, lot seven, section thirty-two, township ten, range four west; lot six, section thirty-four, lot seven, section thirty-five, lots four and five, section thirty-six, township ten, range five west; northeast quarter and east half of northwest quarter, section eleven, west half of west half, section one, east half of southwest quarter, section two, township twelve, range four, west, except such parts of said lands as are now in possession of Robert
366 Hudson, together with all the mules, horses, cattle, and farming implements and other personal property of Sarah D. Partee, owner and possessor on the 19th day of November, A. D. 1866, and the increase of said cattle, & to hold the same subject to the order of the said circuit court. The said receiver will collect the rents due and owing upon the said lands for the current year, and will pay all the taxes accruing thereon, unless the defendants, McCall, William B. Partee, James D. Partee, and Sarah D. Partee, will give bond with approved security in a penalty equal to the rental value of said lands for the current year, to be estimated by said receiver, who is authorized to approve the bond, and conditioned to have said rent forthcoming to abide the orders of the said court in the cause to be hereafter made. He will, unless otherwise ordered at the end of the present year, lease said lands from year to year until the final hearing and sale of said lands under the decree of this court, and will, out of the annual rents, pay all taxes, and hold the
367 balance subject to the order of this court. He will expose to sale under the directions of the solicitor for the complainants all cattle, horses, mules, and personal property taken into possession by him, and hold the proceeds of sale subject to the orders of said court. Before entering upon the discharge of his duties he will execute a bond, payable to the United States, with two securities, to be approved by some United States

commissioner in Yazoo City, in the penalty of two thousand five hundred dollars, and conditioned that he will well and truly perform and discharge all the duties of receiver in this cause.

This ordered, adjudged and decreed at chambers this first day of September, A. D. 1879.

R. A. HILL, *Judge.*

And on the 1st day of October, A. D. 1879, said receiver filed his bond which is in the words & figures following, to wit:

368 Know all men by these presents that we, W. L. Williams, as principal, and T. L. White, W. W. Lumbey, and Wm. Richards, as sureties, are held and firmly bound unto the United States of America in the penal sum of two thousand five hundred dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, &c., jointly and severally firmly by these presents. Given under our hands and seals this 27th day of September, A. D. 1879.

The condition of the above obligation is such that whereas on the 1st day of September, A. D. 1879, a decree at chambers was rendered by the honorable R. A. Hill, judge of the circuit court of the United States for the southern district of Mississippi, in a certain cause therein pending, wherein the Canal Bank et al. are complainants, and W. B. Partee et al. are defendants, whereby the said W. L. Williams was appointed a receiver in said cause with powers and duties as are in said decree specified.

369 Now, therefore, if the said W. L. Williams shall well and truly perform all the duties of receiver in said cause the above obligation is to be null and void; otherwise it is to remain in full force and effect.

W. T. WILLIAMS. [SEAL.]
T. M. WHITE. [SEAL.]
WM. RICHARDSON. [SEAL.]
W. W. LUMBLEY. [SEAL.]

Approved.
[SEAL.]

G. M. POWELL,
U. S. Commissioner.

And on the 14th day of October, 1879, the defendants, R. G. Hudson and C. C. Ewing, filed their answer in said cause, which is in the words and figures following, to wit:

370 Circuit court, U. S. In equity. Southern district of Miss.

THE CANAL BANK ET AL.
vs.
WM. B. & S. D. PARTEE ET AL. } 185. U. S. ct.

The joint and separate answer of Robert G. Hudson & Chas. C. Ewing to bill of supplement & revivor in the above cause.

The said defendants come, & reserving unto themselves the benefit of exceptions to the manifold errors, and mistatements, &c., in said bill of suppliment & revivor & for answer to such parts or so much thereof as they are advised & believe are necessary for them to answer, answering

say: They admit the filing of the original bill in this cause as alleged against the parties alleged, the execution of the deed of trust or assignment by Sarah D. & W. B. Partee, but on information & belief, state & charge the fact to be that the indebtedness sought to be secured thereby was not such, in a great part at least, for which the separate estate & prop-
371 erty of the said Sarah D. Partee, she being the wife of said Wm. B. Partee at the time of the creation of said indebtedness, originally and at the time of the execution of said deed of trust or assignment could be made liable under the laws of our State, & we require strict proof of the fact that the indebtedness, was such as could be made a charge on her separate estate. They also state the facts to be that the notes sought to be secured by said deed of trust were barred by the statute of limitations as to these defendants at the time of the filing of said bill of supplement & revivor in this case, & long before, and hereby submit that question of law to the court as if the same was raised by demurrer. They, on information and belief, deny that said notes were delivered to complainants within the time required by the terms of said deed of trust, and that there was any waiver, express or otherwise, by said Sarah D. Partee, of the limi-
372 tation of the time for the acceptance of the terms of said trust deed; that if the said Sarah D. Partee is bound at all by said trust deed she is not bound by any act or agreement of her said husband made in reference thereto, either before or after its execution, without express authority, duly executed by said Sarah D. Partee, if then; & they require strict proof on this point.

They admit the conveyance of the land and personal property in said deed of trust as stated, but say the same was the separate property & estate of the said Sarah D. Partee. They admit the recovery of the judgment by Jas. Stuart as stated, & that the same was attacked as being void in the original bill in this case, & on information, belief, & advice, they state & charge that said judgment was founded on a note or contract valid & binding against said Sarah D. Partee & her separate estate, and that the same is still a subsisting & valid debt against her.

Respondent, further answering, state that it is true that Sarah
373 D. Partee and her husband executed a release of errors to the judgment recovered by said Stuart in the circuit court of Yazoo County, on the 6th day of June, 1866; but they deny that said release of errors was without consideration; on the contrary they state on information and belief that it was executed in consideration of a stay of execution by the plaintiff, and that stay was obtained and fully enjoyed, and when it was about to expire the said Sarah & her husband sued out a writ of error, giving bond for supersedeas. This writ of error was sued Feb'y, 1868, but, by mistake of the clerk issuing it, it was made returnable to a term of the court unknown to the law, and was besides returnable before the court at Macon, at which place no court was holden; nevertheless, it was sued out by the defendants without collusion with, and without the consent of, the plaintiff, who employed counsel to oppose it.

374 This counsel appeared in the high court of errors and appeals at the April term, 1868, and filed a plea setting up the release of errors aforesaid; but it appearing that the writ of error was void the court, by an order of the October term after, allowed the plaintiff in error to sue out another writ upon the record filed, which writ was obtained and filed as

appears of record; that to this writ no plea was filed. Under the law of the 30th of October, 1866, writs of error were allowed to operate as a supersed'as without bond, and the high court of errors and appeals were required, without the forms of abstract and assignment of errors, to take the record, and ascertain if error there was, as upon assignment of errors, and decide on the matters appearing in the record; and according to the cause of the court and the practice thereof the case was submitted on the record without any plea and without action on the plea filed to the first writ,
375 but upon the single question of error or no error to be determined by the record itself; and the said court at its October term, 1868, took the record on submission, and having duly examined the same found no error therein, and so deliberately adjudged and did, by its order, affirm the said judgment of this circuit court of Yazoo County rendered aforesaid; and respondents insist that for the purposes of that case; and as between the parties to it, said judgment is conclusive of its validity that the original judgment was founded on a note executed and payable in Louisiana by the parties who then resided there, and binding upon the parties to it by the terms of that State, and it so appeared of record that the note was binding in Mississippi, and as a matter of fact was a contract inforc'able in Mississippi, being a contract which a married woman might lawfully make, she being at the time the owner of separate
376 property, and the consideration of said note being for family and plantation supplies; that the error in the record, if error at all, was an error of pleading and statement only; but these respondents are advised that in a court of equity, where after such facts as have been herein detailed it appears that the judgment was rightfully rendered, on a just demand, by a court having jurisdiction of the parties & subject-matter, and executed by a sale of property subject to the demand that the purchasers of said property, purchasing in good faith and then renders in like good faith, have the right to hold the property against strangers.

These respondents deny that there was any trick or device in the issuing out and prosecution of said writ of error, or in procuring its affirmation, and they plead the judgment of the said high court of errors &
377 appeals as bar, as well to the said Partee & wife as to the creditors of said parties, or either them, and persons claiming under them, by conveyance subsequent to the judgment so affirmed, and that in a court of equity it stands as an adjudicated demand with its lien; and in any event the purchase's of the property under it must & should be reimbursed to the extent of the amount before the complainant's alleged debts shall be paid.

They admit the purchase of the "Lake Dick" plantation by Jas. Stuart, and the "No Mistake" and "Tyrone," or property now owned or claimed by these defendants, by Jas. D. Partee, under the Stuart judgment. They admit the mortgage by Jas. D. Partee, in favor of Nelson, Lamphier & Co., of the lands bought by him as alleged; admit the sale under said mortgage and the purchase by T. A. Nelson, all of which occurred prior to the bringing of this suit. They neither admit or deny the dates
378 on which the different proceedings were had as alleged, but suppose the same are true, but reserve the right to except to any error therein, as if they were here specifically set up.

They admit the death of Stuart and his last will and testament as stated;

they admit the sale of the lands described to said McCall & Crouch as stated, but as to the date of the same they are not informed, & therefore neither admit or deny.

On information and belief they admit the conveyance of Crouch to McCall of his interest in the land purchased by them; they admit, on information & belief, the use & occupation of said "Lake Dick" place, &c., by McCall & Crouch as alleged, but deny that the rental value of the same was three thousand dollars any one year, or any sum near that amount. The defendant R. G. Hudson admits the sale to him of one acre of ground
379 on the "Lake Dick" place, as stated. Defendants admit, on information & belief, the conveyance in trust to Edward Drenning to secure the purchase-money by McCall & Crouch, as stated. They know nothing of the conveyance from McCall to Schlenker, but suppose the same is true. They admit the filing of the bills, &c., as alleged, & they state, on information and belief, that T. A. Nelson was at the time a non-resident, & for this reason personal service could not be had on him, & that the deed of trust executed by him to secure the $35,000.00 as stated was executed before any service was had on him, & before any notice to him of the claim of complainants against said property in said deed of trust mentioned; therefore submit the question of law as to whether T. A. Nelson, or any person acquiring an interest or title under said deed of trust, is affected by this suit. As to the date of acknowledgement, &c., of said trust-deed of said Nelson, & the validity of said acknowledge-
380 ment, defendants know nothing, but submit the question of the legality of said acknowledgement to the court, & insist that if defective it does not affect the validity of the deed & sale. They deny that the wagons, carts, harness, plantation implements, & fifty head of mules & horses in said deed of trust by said Nelson were embraced in said trust-deed of November 19th, 1866, but say they were no part of the same property.

Respondents admit the filing of the bill in chancery court of Yazoo County by Jas. P. Benson et al. vs. Nelson, Lamphier & Co. et al., & the proceedings in said case as alleged, & the purchase of the land as alleged by these respondents & Jas. P. Benson, but deny most positively that either of said purchasers at the sale on the 19th day of Feb'y, 1877, had any knowledge whatever or ever even dreamed that complainants had or asserted any claim to said property; that no one appeared at the sale thereof to assert any claim for complainants or any one else, & that it was
381 not until the sale in April, 1878, under the decree in favor of E. Drenning, adm'r of Christopher Todd, deceased, that any one asserted any claim to said property to respondents at said sale; A. M. Harlow, esq., one of the attorneys for complainant, appeared and asserted some claim in behalf of complainants as respondent. R. G. Hudson now remembers the other respondent not being present. They admit the sale of some nineteen mules & some other trifling personal property, six of which mules were claimed by Jas. D. Partee, & attached by him before the sale under the decree in case of Jas. P. Benson et al. vs. Nelson, Lamphier & Co. et al., but they deny most positively that any of said property was embraced in said deed of trust of November 19th, 1866, by said Sarah D. & Wm. B. Partee, and respondents only brought $25.00 worth of said property. The report of the commissioner & record in the

382 aforesaid case on file in this case are referred to for full information on this point, & will be read on the hearing of this cause.

Respondents admit the appointment of a receiver & the payment of the taxes by him as alleged, but state that after his appointment R. Bowman & J. A. P. Campbell claimed the rent of the lands owned by T. A. Nelson, which were the "No Mistake" & "Tyrone" places, or that part now claimed by these respondents under judgment rendered some time before by the circuit court of Yazoo County against T. A. Nelson et al. in favor of said Bowman & Campbell, and were about to levy on the same when by an agreement said receiver paid over all of the rents collected by him to said Bowman & Campbell except enough to pay the taxes & a small commission for the services of said receiver. They admit that the complainants in this suit were no parties to the Benson suit, because

383 they were not known by complainants in last suit, or their attorneys, to have a particle of interest in the property in question.

Respondents state that they & J. P. Benson paid to E. Drenning, administrator of the estate of Christopher Todd, deceased, the sum of $9,391.23, & $110.00 costs, in the case of E. Drenning, adm'r of est. of C. Todd, dec'd, vs. W. B. & S. D. Partee, to enforce the legacy in favor of C. Todd & wife, under the will of James Dick, that J. P. Benson paid of that sum $2,500.00 C. C. Ewing the sum of $3,550.62½, & R. G. Hudson paid the balance, which, including the cost, is $3,450.60.

That said Drenning got an order as adm'r as aforesaid from the chancery court of Yazoo County to sell & assign said decree to said Benson, Ewing & Hudson, & did so assign the same, as will appear by reference to a copy of the said order, assignment, & the proceedings in reference thereto, which will be filed herewith as Exhibit 1, & made a part

384 hereof. Respondents state that R. G. Hudson paid the money directly to said Drenning, & transacted the business in person.

Respondents state that the total gross receipts from the rent of said property for 1877 was about the sum of $2,100.00, and for 1878 the sum of $2,700.00, & will be about the sum of $2,500.00 for 1879; that they have had to pay a manager to look after & collect the rents & expend considerable money in relation thereto, & that the reasonable rental value of said property for 1877 was about $1,000.00, for 1878 $1,500 & for 1879 $1,500.00. Respondent R. G. Hudson states that the reasonable rent of the acre of ground, owned by him as a landing on "Lake Dick," for 1879, is about $100.00. Respondents have already stated the balance claimed by E. Drenning, adm'r of estate of C. Todd, dec'd, the same being $9,391.23.

They caused the taxes of 1876 to be paid by the receiver, as alleged by complainants, they being the sum of $294.84, & paid for 1877

385 the sum of $278.46, & for 1878 the sum of $249.15, duplicate receipts for which are filed herewith marked Exhibits "2," "3" & "4."

Respondents, further answering, state that it is true that part of the creditors, under the deed of trust executed by the said Nelson April 15th, 1873, purchased the property in question at a sale for taxes through their attorneys. The object of such purchase was to secure a complete title for the benefit of the creditors in the deed of trust, and purchasers under it, though the purchasers at the sale had no agency in procuring the sale; and these defendants insist that while it may be true that as between the purchasers and other creditors of the said Nelson under said deed of trust

such purchase might be held to be in trust for all of them, yet all of said creditors may and do, and these defendants insist that, as to the creditors of Sarah D. & W. B. Partee it is a title absolute, and freed from any
386 trust being no property, trust, or confidence between the latter and the said creditors and beneficiaries under the deed of Nelson. These respondent' deny that for ought that is alleged by the complainants that said tax sale is void, and they assert that the revenue laws were substantially complied with; that the apparent excess of the levy is due to the fact that certain special taxes were assessed by the county as provided in the constitution, and as to which the legislature had no right to impose a limit, directly or indirectly. They therefore assert the entire validity of the sale, and insist upon the title thus acquired as a bar to the right of the complainant. Respondents here file the said tax deeds conveying the land to J. P. Benson & C. C. Ewing, as Exhibit 5, to this answer, and rely upon it as an outstanding title superior to that of the complainants', and with which title these respondents are directly connected, and for whose benefit it is held.

387 Respondents deny that they are bound by the decision of the Supreme Court, as they were not parties to it, & they deny that the case was fully & fairly presented to said tribunal, as there was no attorney representing the defendants in said court. Respondents state that they and said J. P. Benson were the joint owners of the Todd decree, and that said Benson conveyed all of his interest in the Todd decree, as will appear by reference to the deed of Benson conveying his interest in the land to these respondents, which is filed as Exhibit to the supplemental bill in this case.

Respondents deny that they are liable for any rents until they were made parties to this suit, & anyhow not until after they had actual notice of this suit, & then only for the reasonable rental value of said property.

Respondents, further answering say, that they are advised that by
388 the will of James Dick the annuity bequeathed to Sarah Todd and Christopher Todd was a charge upon the whole estate devised to Sarah D. Partee, as plainly appears by the tenor and purpose of the will, a full transcript of which respondents file herewith as a part of Exhibit No. 6, to this answer, and pray that it be considered as part thereof, and they submit the same to the judgment of the court. They deny that Christopher Todd made no demand or request or requirement to pay the annuity which they allege plainly, by the terms of the will, survived to him, even if such demand was necessary to preserve the charge, which they in no wise admit; on the contrary, they assert the fact to be that he repeatedly demanded payment, and himself, in his life-time, instituted the suit in the chancery court of Yager County, to enforce the charge, and preceding said suit died, and the same was revived in the name of
389 Edward Dremning, his administrator, in whose favor a decree was rendered, allowing all payments, and adjudging the balance due to be, at its date, 7,680.04 dollars, and decreeing the same to be a charge by the will on the property devised to the said Sarah D. Partee by the will of James Dick, deceased, and upon the lands and plantation known as "No Mistake," the description by which it was devised & by which it was well known, and known to include the "Tyrone" place, at the date of the will. Respondents further state that said Christopher Todd supposed,

when he filed his original bill, that the property then, for the first time, called "Tyrone" plantation, had been acquired by said Sarah out of the income of property devised, but in point of fact the said "Tyrone" place was part of "No Mistake," and passed to her under the will, and both places being known at the time, and well designated by the names aforesaid were sold under the decree designating them
390 by their names, but the commissioners sold "No Mistake" plantation not only by its name, but by numbers, as it was originally known & devised, and these numbers include the "Tyrone" place. Respondents states that the original bill was filed by Christopher Todd the 18th November, 1867, against the said Sarah D. Partee and her said husband, and although, as now appears, the deed of trust under which the complainants' claim had been in form executed, it was to be accepted before it became operative, and there was no evidence of its acceptance, and no presumption could arise that it had been accepted from the fact of its execution, because it imposed onerous conditions on the creditors.

Your respondents do not know if any or what number of the creditors provided for had accepted the terms of the deed, but *is* informed and believes that there was not an acceptance within the time prescribed
391 by the complainants, and that there never was by the said Sarah D. Partee any waiver of the conditions of the said deed; and respondents state that said Todd and his counsel, at the date of this filing of his said bill, had no notice, nor did they suppose that there was any operative conveyance of her title to the property; that said Sarah and her husband were in possession of the property and were made parties to the bill, and process was duly served on them. No other persons were made parties, because it was not supposed that other parties were necessary, and they are advised they were not.

Respondents, further answering, state that after the purchase of "No Mistake" by James D. Partee, under the Stewart judgment in 1869, until which time said Sarah & her husband held possession, said James D. took possession under his purchase; that said decree in favor
the administrator Drenning, rendered on the 8th day of June, 1868, as will appear by Exhibit No. 6, heretofore referred to, was
392 suffered to stand unexecuted as matter of indulgence to said Sarah D. Partee; that said James having become the owner and possessor on the 18th July, 1870, filed his bill in equity in the chancery court of Yazoo County to enjoin its execution against the said Drenning and certain other heirs of Christopher Todd; that the said injunction was granted by W. Ben. Cunningham, judge, and the same actually was issued and duly served upon said Drenning, but, as it appears from the clerk's statement in the record of the proceedings, said writ has been mislaid; its existence, however, is recognized in the proceedings of the court; that said injunction remained in force, and was not finally dissolved until Jan'y 12th, 1877; that during this period the statute of limitations ceased to run against said claim & decree. The copy of the record in said injunction suit is filed as
393 Exhibit No. 6. And your respondent are advised that the change of the annuity constituted the property or trust fund for its payment, and all parties purchasing or claiming under said Sarah D. Partee took and held the property subject to the charge and with full notice, the will having been duly probated and recorded, and held the same as trustees,

and that the statute of limitations does not bar the claim as to them, especially as it is not a bar as to the said Sarah D. Partee; that so long as it continued a valid & operative charge as to her, it was operative upon those claiming under her and in privity with her; that neither the trustee under the said deed of trust nor any creditor provided for therein ever had possession of the property or ever asserted a title adverse to the said charge.

Respondents, further answering, state that after the dissolution of the injunction aforesaid, they, with one Benson, being interested
394 in the said "No Mistake" property, and regarding the said decree and charge in favor of Christopher Todd as a binding charge on said property, purchased said decree and charge from said Drenning, paying therefor its full amount, and not intending to extinguish the same as a lien, but to preserve it, took an assignment of the decree, and the said Benson conveyed both his interest in said decree and the property to these respondents, who thus become the owners thereof; that they enforced said decree by a sale of the property, and as creditors purchased the same, as will appear by the record and proceedings filed herewith as Exhibit No. 7, and received the commissioner's deed for the same, upon which they insist. And your respondents, answering, say that they are advised and so state, that the annuity on which said decree was rendered was a
395 charge paramount to the claims of the complainants, and that if it should be held that they may contest the said decree because not technically parties to it, such right in them is simply a right to ascertain whether or not said decree was well founded in fact and law, and if it shall appear that it is well founded, that it will in all respects stand as a valid decree, and that no objection to the same arising subsequent to the rendition of it can be urged by them, but that these objections must be such as would have been valid and available at the time of the filing of the bill in the cause in which it was rendered. And respondents further claim and insist that if the title acquired by them to the said property by the sale by the commissioner be held to be ineffectual, they are nevertheless entitled to have the amount due on said decree and paid by
396 them paid to them, and that the same is, with legal interest, a prior charge on the said property.

Respondents, further answering, state that the amount paid by them in the purchase of said decree was $9,391.63, and that the same was paid to the said Drenning, as administrator, and, as they are informed and believe, was paid over by him to the heirs of said intestate according to law, so that no one of said heirs or distributees has any further claim or demand upon the same.

Respondents, answering, say that they paid the amount of purchase money for said decree to the said Drenning, and not to the distributees, or either of them, and are in no way responsible for payment made by Drenning in the course of his administration.

Respondents, though not called to answer the allegations of the
397 original bill in this cause, in order not to be precluded in any manner thereby, on information and belief, deny that the several deeds of trust executed by James D. Partee and wife were fraudulent, colluable, or collusive, but on such information and belief say that the same were executed in good faith and bona fide for the purposes therein stated, and they further say that they had no notice of or reason to suspect any fraud

or bad faith in the execution or creation of the same, and they especially deny that there was any fraud in the sale under the deed by Barksdale, trustee for Nelson, Lamphier & Co., at which said Nelson became the purchaser; and they further allege that the deed of trust executed by said Nelson was made in good faith and for the benefit of the creditors therein secured, which creditors were creditors in good faith and without any knowledge of any fraud, if any existed, which respondents positively deny. And as to the allegations of bad faith in
398 Robert Bowman, trustee, and as to all the matters charged respecting the acceptance of the conditions of the deed of trust by the creditors provided for in the deed of trust from Sarah D. Partee & her husband, they were not otherwise informed than by the answer of said Bowman and the evidence taken in said cause, and they believe the answer of said Bowman to be true, notwithstanding any testimony in the record of this cause contained, and therefore, on information and belief, deny that there was a valid acceptance of said deed of trust; and respondents further allege on their information and belief that said Stewart had no notice of the acceptance of said deed of trust, and on the contrary on sufficient ground supposed that the scheme was rejected and abandoned; that no money was ever paid or any step taken to enforce the said trust; that several of the creditors therein provided for, dis-
399 regarding the said deed, had proceeded to sue on their original claims, and these respondents believe, and so charge the fact to be, that the claim set up by the complainants was an afterthought, as shown by their own conduct & admissions in their original bill, having taken no steps to enforce their deed of trust or to look after the property until long after some of the notes were due, & having sued on some of the original notes which are now on file in the papers in said suits, although the complainants, who sued on said original notes, viz, Crescent City Bank & New Orleans Canal & Banking Co. (certified copies of the proceedings and records in said cases are filed herewith as Exhibits 9 & 10), now claim to hold the new notes & to have accepted the terms of the deed of trust; & respondents insist that it is now too late for them, after they were thwarted in their attempts to collect the original notes, to undertake
400 to avail themselves of the terms of the deed of trust of Nov. 19th, 1866, & defeat the rights of bona fide & innocent purchasers, & that it was too late for them to come forward & offer to pay off prior encumbrances & claims against the property when they discovered the sad reality that they could not collect their original notes; & respondents insist further that if complainants did have the privilege of paying off the Todd legacy & Stewart judgment, as they claim in their original bill, they are now estopped from any attempt to avoid paying the same, & to play a "sweepstake" game & get the property free from all encumbrance in its present improved condition.

Respondents deny that if the irregularities did exist, as stated in the original bill in this case in reference to the writ of fi. fa. & the proceeding thereon, the sale of said lands, &c., under the Stuart judgment,
401 they are sufficient to invalidate the sale & require a strict showing & proof on this subject. They deny that the proper notice was not given of said sale, & that everything was not done in reference thereto to render said sale valid, & they deny most positively, on information &

belief, that said sale was not free, open, & fair, & in all things in accordance with law, & deny further on information & belief that said Sarah D. & Wm. B. Partee ever had sufficient personal property unencumbered out of which said Stuart judgment could have been made after plaintiff had the right to have a levy made, & if there was a sufficient amount of personal property then respondents should not be affected by the act.

Respondents state that they purchased the property in good faith, & went into possession of the same believing they had a good title to
402 the same, & could hold it against the claims of all the world, & without any knowledge whatever of the claim of complainants or of this suit, & that they paid, including the Todd decree, the full value of all the property purchased by them in its then bad and dilapidated condition, & have since enhanced the value of the same very greatly by putting upon it permanent & valuable & not ornamental improvements; that a large portion of the land once in cultivation was lying out & had grown up in cotton-wood & willow trees, & was badly beset with bermuda grass & weeds, & a good deal of it was frequently overflown from a creek running through the present "No Mistake" plantation, & there was but little fencing on the property. Respondents insist that they are entitled to pay, in case they should be adjudged not to have the title to said property,
403 for the valuable & permanent and not ornamental improvement they have put on said property up to the time they were served with notice in this case, or if not entitled to pay for all said improvements up to that date they are for all said improvements up to the time they were notified by A. M. Harlow, one of the attorneys for complainants, at the sale under the Todd decree, which date was the 15th day of April, 1878, as appears by the deed from Taylor, commissioner, to these respondents on file in this case. A bill of particulars of such improvements will be filed herewith, marked "Exhibit ," and made a part hereof. Respondents state that by reason of the dilapidated condition of the property the large amount of land lying out, overflowed by the creek, grown up in cotton-wood & willows, & overrun with bermuda, & the poor fencing, and the lateness of the time of taking possession, the property
404 would not have rented for exceeding the sum of $1,000.00, during the year 1877. There was no gin-house, &c., on the property with which the crop of that year could have been ginned, but by reason of the uselessness of the gin-house & machinery & their dilapidated condition much of the cotton crop of the year before was hauled to a neighboring gin & prepared for market there; that the gin-house & machinery was abandoned as worthless, & these respondents were compelled to erect an entirely new one out & out to gin the crop of 1877; that there was not exceeding one & a half mile of fencing in a rotten condition on said property, although it required six or eight miles of fencing to enclose the open land; that there was only three hundred & five acres of land in cultivation during the year 1877, this being about all that could be put in during that year, as
405 respondents only got possession a day or two after their purchase on the 19th of Feb'y, 1877, & could not procure the labor to cultivate more of it; that by reason of the improvements made on said property during 1877, these respondents were enabled to realize more rent in 1878, by about $300.00 or $500.00, & the same thing is the case during the present year; that respondents paid out during 1877 & 1878, up to

Dec'r 23d, 1878, $50.00 per month for a man to superintend said property & the improvements thereof, & since that date had been paying $60.00 per month for the same thing, so that the net profits of the rents of said property do not exceed the sum of $1,500.00 per annum, not taking into consideration the taxes paid each year on the same. Respondent R. G. Hudson states that he has erected on the acre of ground purchased of O. H.
McCall, permanent, valuable, & not ornamental improvements
406 worth 800.00; that he bought said acre or lot from McCall & erected said improvements before he was made a party to this suit.

Respondents insist that if they should be decreed not to hold the title to said property, that an account may be taken of the amount paid out by them on the Todd decree on the tax title & for taxes with proper interest & valuable & permanent & not ornamental improvements, & for such other titles as the court may decree proper, & such amount be decreed to be a lien & charge on the property.

Respondents deny that they are chargeable with any rents until after they had actual notice of the suit of complainants.

Respondents estimate the value of their improvements, which are permanent & valuable & not ornamental, at the sum of ten thousand
407 dollars. And now, having fully answered, respondents pray to be dismissed with their costs, &c.

STATE OF MISSISSIPPI,
Southern district:

This day personally appeared before the undersigned clerk of the United States court for the southern district of Mississippi, at Jackson, R. G. Hudson, who, being duly sworn by me, deposes and says that the matters & things stated in the foregoing answers, of his own knowledge, are true, & those stated on information & belief he believes to be true.

R. J. HUDSON.

Sworn to and subscribed before me this the 3rd day of October, 1879.

JAS. M. McKEE, *Clerk.*

408 Exhibit No. 1 to said answer is in the words and figures following, to wit:

[NOTE.—The said Exhibit No. 1 has been lost from the files and cannot be found after diligent search.

J. M. McKEE, *Clerk.*]

Exhibit No. 2 to said answer is in the words and figures following, to wit:

409 SHERIFF'S OFFICE, YAZOO COUNTY, MISS.,
, 1879.

Received of R. G. Hudson et al. $249.15, State, county, & special fund taxes for the fiscal year 1878, as per following statements and description of real and personal property, to wit:

S. ½	9	9	4 W.
E. ¼ & SW. ¼ & S. ½ of NW. ¼	10	"	"
W. ½ of NE. ¼ & SE. ¼ of W. ½	11	"	"

All	14	"	"
N. ½ & E. ½ of SE. ¼	15	"	"
E. ½ & NW. ¼	23	"	"
W. ½	24	"	"

County, 249.15.
Duplicate.

A. L. TAYLOR,
Sheriff & Tax Collector, Yazoo Co.

Exhibit No. 3 to said answer is in the words and figures following, to wit:

410 SHERIFF'S OFFICE, YAZOO COUNTY, MISS.

Received of "No Mistake" plantation $278.46, State, county, and special fund taxes for the fiscal year 1877, as per following statements and description of real and personal property, to wit:

Division of section.

S. ½	9	9	4 W.
E. ½ & SW. ¼ & S. ½ of NW. ¼	10	"	"
W. ½ of NE. ¼ & SE. ¼ & W. ½	11	"	"
All	14	"	"
N. ½ & E. ½ of SE. ¼	15	"	"
E. ½ & NW. ¼	23	"	"
W. ½	24	"	"

County, 278.46.
Duplicate.

A. L. TAYLOR,
Sheriff and Tax Collector, Yazoo County.

Exhibit No. 4 to said answer is in the words and figures following, to wit:

411 SHERIFF'S OFFICE, YAZOO COUNTY, MISS.

Received of R. G. Hudson et al. $249.15, State, county, and special-fund taxes for the fiscal year, 1878, as per following statements and description of real and personal property, to wit:

Division of section.

S. ½	9	9	4 W.
E. ½ & SW. ¼ & S. ½ of NW. ¼	10	"	"
W. ½ of NE. ¼ & SE. ¼ & W. ½	11	"	"
All	14	"	"
N. ½ & E. ½ of SE. ¼	15	"	"
E. ½ & NW. ¼	23	"	"
W. ½	24	"	"

County, $249.15.

A. S. TAYLOR,
Sheriff and Tax Collector, Yazoo County.

Exhibit No. 5 to said answer is in the words and figures following, to wit:

412 I, H. C. Taylor, tax collector of Yazoo County, Mississippi, have this day, according to law, sold the following lands, there being no other property found on which to levy and make the taxes due on said lands, to wit: S. ½, sec. 9, E. ½ & SW. ¼ & S. ½ of NW. ¼, sec. 10; W. ½ of NE. ¼, & SE. ¼, & W. ½ of sec. 11; all sec. 14; N. ½ & E. ½ of SE. ¼, sec. 15; E. ½ & NW. ¼, sec. 23; W. ½, sec. 24; t. 9, range 4 west, for taxes assessed to the reputed owner thereof, for the year A. D. 1875, when J. P. Benson, & C. C. Ewing, became the best bidder at the sum of $383.47 dollars.

I therefore sell and convey said lands to the said J. P. Benson, & C. C. Ewing, his heirs and assigns forever.

Given under my hand and seal this the 3rd day of January, A. D. 1876.

H. L. TAYLOR. [L. S.]

STATE OF MISSISSIPPI,
Yazoo County:

413 Personally appeared before me, G. M. Powell, clerk of the chancery court of said county, H. S. Taylor, who acknowledged that as said sheriff of said county, he signed, sealed, and delivered the foregoing deed on the day and year therein written, as his act and deed.

Given under my hand and seal of said court this 17th day of January, A. D. 1876.

[SEAL.] G. M. POWELL, *Clerk*
By N. T. PUGH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, George M. Powell, clerk of the chancery court of said county, certify that the instrument of writing to which this certificate is attached from H. L. Taylor, sheriff, &c., to Benson and Ewing was filed in my said office for record on the 9th day of Dec'r 1878, and that the same has been made of record therein in book Y Y of the record of deeds, &c., of said county, on page

414 Given under my hand and seal of said court, at Yazoo City, this 14th day of Dec'r, 1878.

[SEAL.] G. M. POWELL, *Clk.*

Exhibit No. 6, to said answer is in the words and figures following, to wit:

415 No. 146.

Be it remembered that heretofore, to wit, on the 18th day of November, 1867, the following bill was filed in the office of the chancery court of Yazoo County.

Bill.

To the Hon. J. A. P. Campbell, judge of the fifth judicial district of the State of Mississippi, in chancery sitting:

The bill of complaint of Christopher Todd, complainant, against William B. Partee and Sarah D. Partee, his wife, defendants, humbly complaining, showeth unto your honor your orator, the aforesaid Christopher Todd, that on the day of July, in the year 1849, that James Dick, of the city of New Orleans, in the State of Louisiana, made his last will and testament, and shortly thereafter died. Your orator states that said will was duly executed and admitted to probate in the State of Louis-
416 iana as well also as in the State of Mississippi. Your orator state and charge the fact to be that in and by said last will and testament devised and bequeathed to said Sarah D. Partee, the wife of said Wm. B. Partee, a plantation in Yazoo County, Mississippi, on the Yazoo River, below and near the town of Satartia, known as the "No Mistake" plantation, containing over three thousand acres of land, together with all the mules, horses, cattle, buildings, and farming utensils, &c. Your orator states and charges the fact to be that under said will the said Sarah D. Partee entered upon and received possession of said plantation immediately after the death of said Dick, and has continued to remain in possession thereof, and is now in possession, cultivating and using the same, and that the negroes were freed by the result of the late war. Your orator
417 states and charges the fact to be that from the proceeds of said plantation said Sarah D. Partee has purchased other mules and farming implements, and also two other plantations known as the "Lake Dick" and "Tyrone" plantations, adjoining the said "No Mistake" plantation.

Your orator states that the aforesaid devise of said plantation, negroes, &c., was made to said Sarah D. Partee, upon the conditions that she should pay annually to your orator and his wife, or the survivor, the sum of $1,000.00 dollars, and said payment to your orator and his said wife, as aforesaid, was, by the terms of said will, expressly made a charge upon said land and other property, and the said payment was a part of said devise. Your orator states that he is advised, and believes, and so states, that the said Sarah D. Partee and her said husband were, by said will, trustees for the payment of said sum of money annually
418 from said property, and the said land and other property was charged with said payment as a trust; your orator states that the said sum of $1,000.00 annually was bequeathed by said James Dick to your orator and his wife, and the said property so bequeathed to said Sarah D. Partee was expressly charged with the payment thereof, a copy of which said will, with proceedings thereon, is herewith filed as Exhibit A and made part hereof. Your orator states the fact to be that in the year 1853 his wife, the said Sarah, died. Your orator further shows that said Sarah and W. B. Partee paid your orator annually the sum of $1,000.00, up to the first day of January, 1861, since when they have failed and refused to pay to your orator said sum of $1,000.00, the payment of which is charged on said plantation.

Your states that there was due him on the first day of January,
419 1866, the sum of $6,000 dollars, with interest under and by virtue of said will in manner as aforesaid, and that no part thereof has been paid, and that there will be due him on the first of January, 1867,

$1,000.00, and annually thereafter the additional sum during the term of his natural life. In tender consideration whereof and for as much as your orator is remediless at and by the strict rules of the common law, and relievable only in a court of equity for matters of this sort are properly cognizable and relievable.

To the end, therefore, that the said Sarah D. and William B. Partee, the defendants hereto, and full, true, direct, and perfect answers makes to all and singular the premises, and that as fully as if the same were here again repeated, and thereunto specially interrogated. And that an account be taken of the aforesaid indebtedness, principal and interest,
420 of said Sarah D. and William B. Partee, to your orator, under the direction of this honorable court, and that they be decreed to pay the same at an early day; and in default thereof that the said lands known as the "No Mistake" plantation, as also the "Lake Dick" and "Tyrone" plantation, and the personalty thereon, or so much thereof as may be liable for said indebtedness or be sufficient to pay the same, be decreed to be sold for the payment thereof by a commissioner, to be appointed by this honorable court, and for such other and further relief as the nature of his case may require; may it please your honor, to grant unto your orator writs of subpœna issuing out, &c., directed to said William Bond Sarah D. Partee, of , Yazoo County, Mississippi, to be and appear before our chancery court on the 4th Monday in November, 1869, at the
421 town of Yazoo City, and then and there to answer the premises, and stand to and abide by such decree as our court of chancery may direct.

WILKINSON & BOWMAN, *Sol's.*

EXHIBIT A.

Will of James Dick.

STATE OF LOUISIANA,
Fifth District Court of New Orleans:

Estate of James Dick, deceased. Copy of will filed and probated 22nd March, 1849.

I, James Dick, of New Orleans, State of Louisiana, make this my last will and testament, annulling all former wills, dispositions, and testaments. I give and bequeath to Anne Jane Todd, wife of John B. Wallace, of New Orleans, and to her heirs, the following property, to wit: The lot and buildings thereon, running from Union street to Perdido street, in the second municipality of the city of New Orleans, and which formally be-
422 longed to Towensly, Prieur & Co., I did convey to my said niece and her husband by act before Lucien Hermann, notary public, a property situated at the corner of Carondelet street and Perdido street, in the said municipality and city of New Orleans, which was in satisfaction of the legacy left to her, the said Anne Jane Todd, by my late brother, Nathaniel Dick; as I have not so confessed it in said act receipt of the said legacy will be given to my estate by the said Anne Jane and her husband under penalty of the annulling and rescinding of the above legacy by me given of the said property from Union street to Perdido street.

2nd. I do also give and bequeath to the said Anne Jane Todd, my niece, and wife of John B. Wallace, and her heirs forever, three thousand two hundred acres, or thereabouts, of land situated on the Arkansas River, or near thereto, and opposite the plantation of Tom Smith, esq., usually called the Colonel's tract.

3. I also give and bequeath to said Mrs. Anne Jane Todd, my
423 niece, and wife of John B. Wallace and to her heirs about 2,800 acres of land situated in the State of Louisiana for fact (sic) of which I have patents; and for the more full description whereof I refer my said dear niece to Henry R. H. Hill, who has cognizance of the tracts and the papers relating thereto. To my niece Sarah D. Todd, wife of William B. Partee, of New Orleans, and to her heirs I give and bequeath, 1st my plantation commonly called "No Mistake" plantation near Satartia, Yazoo County, State of Mississippi, with all the negroes, horses, mules, cattle, buildings, and farming utensils that may be found on said estate at the time of my death, and belonging to me.

2nd. I give and bequeath to the said Sarah D. Todd and to her heirs about six thousand acres of land situated in this State and entered by H. E. Lawrence and Brashear in my name. This bequest is made to
424 Sarah D. Todd, wife of William B. Partee, upon the following conditions, under the penalty in case of non-compliance of loss of the above property. The first of said conditions is that the said Sarah D. Todd, wife of said William B. Partee, shall, within the next ensuing month after my death, pay to Miss Elizabeth Calhoun, of Muncy County, State of Tennessee, and to Nathaniel Calhoun, and to Christopher Calhoun, her brother, children of Margaret Todd, wife of Charles Calhoun, and residing in Muncy County, State of Tennessee, the sum to each of $12,000 dollars, that is to say to Mrs. Elizabeth Calhoun the sum of $12,000, to Nathaniel Calhoun $12,000, and to Christopher Calhoun, $12,000, and in case of the death of either or any of them, without issue, then the sum or sums coming to said parties or their heirs to be given to the survivor or the survivors in equal proportions. The second of said conditions is that the said
425 Sarah D. Todd and her heirs shall pay to Christopher Todd and to Sarah, his wife, my sister, $1,000.00 dollars per annum during the life of either, payable as they or the survivor may require it. I give and bequeath to Susan K. Todd, wife of A. M. Looney, and to her heirs:

1st. The sum of $25,000.00.

2nd. All my interest in lands back of Helena, in the State of Arkansas, and containing 85,000 acres, more or less, I give and bequeath to my said niece Susan K. Todd, wife of A. M. Looney, as aforesaid, and to her heirs.

3rd. I do likewise give and bequeath to the said Susan K. Todd, wife as aforesaid, and to her heirs, all and several the tracts of land owned by me in Chicot County, State of Arkansas, and containing about 3,500 acres, more or less.

4th. I do also give and bequeath to my said niece Susan K. Todd, wife of said A. M. Looney, and to her heirs, a lot of ground owned
426 by me near Memphis, State of Tennessee, and containing about seven and one-half acres, and for the above bequest to the said Susan, wife of A. M. Looney, I do nominate, constitute, and appoint as trustee the said A. M. Looney and Edmund Delehunty, of Muncy County,

Tennessee, giving them possession and ownership, in trust, to retain possession, invest, and sell and reinvest the same, at their discretion, and the fruits, products, and interest thereof to pay over at the end of every year to the said Mrs. Susan K. Todd, wife as aforesaid, whose receipt shall be in full satisfaction thereof, and this trusteeship, possession, &c., to contain during the life-time of the said Susan K. Todd; and in case and in the event of the demise of the said Edmund Delehunty previous to the demise of the said Susan, then the said trusteeship to be contained with the said
427 Looney, and whom I hereby constitute and appoint in his place and stead. I give and bequeath to my niece Mary R. Todd, wife of Sterling H. Lester, and to her heirs, $40,000.00, and appoint as trustees to invest the same and pay to her, after receipts thereof, the interest annually, my friends James McLean and William B. Partee, or either of them, in case of resignation or death of *of* the other.

2nd. I also give and bequeath to my said niece, Mary R. Todd, wife of Sterling H. Lester, and to her heirs, all my lands in Leake County, State of Mississippi, being 5,000 acres, more or less, and all the lands owned by me in Madison County, State of Mississippi.

And in testimony of my love and affection I do make the following bequests, viz.: To Miss Amelia Byrne, $5,000 dollars; to Miss Sallie Atkinson, residing in Louisville, $5,000 dollars; to Miss Vir-
428 ginia Atkinson, her sister, also residing in Louisville, daughter of Anna Atkinson, $5,000; to my friend R. Redmond, of New Orleans, one of my watches; to the Right Reverend the Bishop James Andrews, of Georgia, my other watch; to Robert N. Kelso, residing in Virginia, the proceeds of all the stock in the Bank of Louisiana, standing in my name, the said stock to be sold by my executor and the money to be remitted by him to the said Kelso; and I do give and bequeath the following annuities: To Mrs. George Dick, residing in Tyrone County, Ireland, I give and bequeath £100; to Mrs. Fulton, residing in Baltimore, I give and bequeath $250.00; to Mrs. Anna Atkinson, residing in Louisville, $500.00 dollars; to my servants, Joe and Diana, and the survivors, one hundred and fifty dollars, all and each of their natural lives, and during said space of time and for each and all Henry R. A. Hill is con-
429 stituted trustee, and authorized to retain sufficient amount from my estate to pay and satisfy the same.

I do likewise will and bequeath to Jane Knox McAlister, residing in the family of H. R. A. Hill, aforesaid, the sum of $2,500.00, which I hereby authorize the said Henry R. A. Hill, to retain further from my estate to be delivered to her on her marriage, or when she becomes of age. I do likewise will, give, and bequeath to John Dick, residing in Yazoo County, Mississippi, the sum of $50,00.00. I do give and bequeath to Elizabeth Calhoon and to her two brothers, residing in Maury County, Tennessee, the further sum of $5,000 each. I give my cab and horses to Mrs. Hill, wife of Henry R. A. Hill. And my will as follows: That all the lega-
430 cies which I have given in money and not charged upon any particular fund is not demandable from any person whomsoever for the term of two years after my decease, nor shall interest be claimed for the same from any person whomsoever and particularly from Henry R. A. Hill, of New Orleans, and my late partner, whom I do hereby nominate, constitute, and appoint my residuary legatee, giving and be-

queathing to him, the said Hill and to his heirs forever, all the balance of my estate of whatever nature or kind, whether real or personal, requiring him or his heirs to pay to the said legatees interest on their legacies at the rate of 7 per cent. per annum after the lapse of two years until the expition of 7 years from my decease, during which time my said legatees shall not claim or demand from the said Hill the capital of the said legacies under penalty of losing and forfeiting their respective legacies as they may attempt to violate this my will. I do,
431 nevertheless, except from this provision Miss Amelia Byrne, Miss Sallie Atkinson, and Miss Virginia Atkinson, only in case and as they should be married when their respective legacies shall become due.

And I do nominate and appoint Henry R. A. Hill aforesaid my executor of this my last will and testament, giving him full seizure and detainer of my estate, and the term of seven years to act as such executor, with seizure and detainer as aforesaid. And should any legatee endeavor by action of any kind or nature before any court in any State to break, injure, or destroy any of my said dispositions the bequest or legacy to such person or persons is annulled or rescinded by me. The legacies of
$12,000.00 each to Elizabeth Calhoon, Nathaniel Calhoon, and
432 Christopher Calhoon may be paid by Sarah D. Todd, wife of William B. Partee, in the following manner, viz: To Elizabeth Calhoon on the day of her marriage, and to Nathaniel and Christopher when they become of age, upon condition that the said Sarah D. Todd pays to the said legatees annually interest at seven per cent. upon their respective legacies after she comes in possession of "No Mistake" plantation.

(Signed) JAMES DICK.

NEW ORLEANS, *March 13th*, 1849.

Signed in presence of—
R. W. ESTHER,
A. R. MAY,
R. G. BLACK,
B. H. MOSS,
D. R. MAY.

We certify the foregoing six pages were on the 13th day of March, 1849, presented to us by James Dick, declaring to us that it was his last will and testament; which he had caused to be written out of our presence, and that the said will was read by one of witnesses to the rest of
433 us in the presence and hearing of the testator, who then signed his name to the said will, all in our presence.

(Signed) R. W. ESTLIN.
B. H. MOSS.
R. G. BLACK.
R. W. MAY.
D. R. MAY.

STATE OF LOUISIANA:

Fifth district court of New Orleans.

I hereby certify the above and foregoing six pages to contain a true, full,

and complete copy of the nuncupate will, under private signature, of James Dick, this day admitted to probate in this court.

In testimony whereof I have hereto set my hand and affixed the seal of said court at the city of New Orleans this 22nd day of March, A. D. 1849.

G. W. LEWIS,
Deputy Clerk.

Summons.

THE STATE OF MISSISSIPPI:

Chancery court of Yazoo County.

To William B. Partee and Sarah D. Partee, his wife, greeting:

434 For certain causes offered before us in our court of chancery of said county, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at a court of chancery to be holden at the court-house in Yazoo City on the fourth Monday of November, A. D. 1867, to answer a bill of complaint exhibited against you by Christopher Todd, complainant in our said court, and further to do and receive what our said court shall have considered of this behalf; and this you shall in no wise omit under the penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Issued 18th day of November, 1867.

G. A. GIBBS, *Clerk*,
By E. DRENNING, *D. C.*

Sheriff's return.

435 Executed on W. B. Partee Nov. 20th, by delivering to him a true copy of the within writ; also on Sarah D. Partee by leaving a true copy of the within at her place of residence, with her husband, a free white person over the age of 16 years, she being absent.

S. M. DYER, *Sheriff*,
By P. BARHAM, *D. S.*

And afterwards, to wit, at the May term, 1868, the following proceedings were had in said court in said cause June 8th, 1868:

Revival.

CHRISTOPHER TODD
vs.
W. B. PARTEE ET AL.

This cause this day came on to be heard on motion to revive this cause in the name of Edward Drenning, special administrator, and the court, being fully informed in the premises, doth order, adjudge, and decree that said cause stand revived in the name of Edward Drenning, special administrator.

436 *Pro confesso.*

TODD'S ADM'R
vs.
PARTEE ET AL.

This day come on this cause to be heard on motion to take this cause as confessed as to all the defendants, and the court being fully informed in the premises, doth order, adjudge, and decree that said cause be taken as confessed as to all the defendants.

Com'r appt.

TODD'S ADM'R
vs.
PARTEE ET AL.

This day come on this cause to be heard on motion by complainant to appoint G. A. Gibbs commissioner, to take an account of the amount due by defendants to complainants, and the court, being fully informed in *in* the premises, doth order, adjudge, and decree that G. A. Gibbs be appointed commissioner and required to take and state an account of
437 the amount due complainant by defendants.

Report.

TODD'S ADM'R
vs.
W. B. PARTEE ET AL.

To the honorable J. A. P. Campbell, judge, &c., setting as chancellor:

The undersigned, appointed by your honor as commissioner in chancery case = 146 of Christopher Todd's adm'r vs. W. B. Partee, to compute and take an account of the amount due by defendants to complainants, would respectively report that he has made said computation and find' that said defendants were indebted, principal and interest, to said complainant's intestate in his lifetime, and at the time of his death as annuitant under the will of James Dick, deceased, the sum of 87,680.04 dollars, which said sum is still due and unpaid, principal and interest, up to this date.

G. A. GIBBS, *Com'r.*

JUNE 8TH, 1868.

438 TODD'S ADM'R
vs.
W. B. PARTEE ET AL.

This day this cause came on to be heard on motion by complainant to confirm the report of G. A. Gibbs, commissioner appointed by this court, and this court being fully informed in the premises, doth order, adjudge, and decree that said account be, and the same is hereby, in all things confirmed.

JUNE 8TH, 1868.

Final decree June 10th, 1868.

EDWARD DRENNING, ADM'R, &C., OF CHRISTOPHER TODD, deceased,
vs.
W. B. PARTEE ET AL.

This cause having been brought on this day to be heard upon the bill of complaint filed therein, taken as confessed by the said defendants, William B. Partee and Sarah D. Partee, and the exhibits to said bill, and upon the report of George A. Gibbs,
439 heretofore appointed by this court to take and state an account of the amount due to complainants intestate in his lifetime, under the last will and testament of James Dick, deceased, mentioned and set fourth in said bill of complaint. And on reading and filing said report, from which it appears that there was due to complainant's intestate in his lifetime, and at the time of his death, the sum of $7,680.04 dollars, and said report being found in all things correct, the court doth order, adjudge, and decree that said report and all things contained therein be, and the same hereby, satisfied and confirmed. And the court being now fully advised, doth order, adjudge, and decree the aforesaid sum of $7,680.04 dollars so found due to said complainant's intestate in his lifetime is under and by the provision of the said last will and testament of James Dick, deceased, mentioned in said bill
440 of complaint, a lien and charge upon all the lands of said defendants devised to said Sarah D. Partee, under and by said last will and testament of James Dick, deceased, known as the "No Mistake" plantation, near the town of Satartia, in the county of Yazoo and State of Mississippi. And the court doth further order, adjudge, and decree that the aforesaid lands, known and designated as the "No Mistake" plantation, is and doth stand charged with the payment of the aforesaid sum of $7,680.04 dollars, against all liens and encumbrances created thereon by the said defendants since the death of said James Dick, deceased, on the day , 1849, and against all other judgments and decrees rendered against said defendants. And the court doth further order, adjudge, and decree that said defendants pay to said complainant the aforesaid sum of $7,680.04 so found due, within thirty days
441 from the date of his decree, and in default thereof that the aforesaid lands, known and described as the "No Mistake" plantation, or so much thereof as may be sufficient, be sold for the payment of the aforesaid sum of $7,680.04 dollars, so due to said complainant, and that lands so sold for cash at public auction, upon giving notice of the time and place of sale as required by law. It is further ordered, adjudged, and decreed that the sheriff of Yazoo County be appointed a commissioner to execute this decree in the sale of said lands, and that he execute a deed therefor to the purchaser on the said sale, and that from the proceeds arising from the sale of said lands said commissioner shall pay the costs of said sale, and then pay to said complainant or his solicitors the aforesaid sum of $7,680.04, together with legal interest thereon, and that the
442 said commissioner report all his proceedings as such to the next term of this court.

It is further ordered, adjudged, and decreed that said defendants pay the costs of this suit.

J. A. P. CAMPBELL,
Chancellor.

JUNE 8TH, 1878.

Commissioner's report of sale of lands.

To the honorable E. G. Peyton, chancellor of the 9th chancery district of the State of Mississippi, sitting in Yazoo City, in and for the county of Yazoo.

E. DRENNING, ADM'R, &C., *vs.* W. B. PARTEE ET AL. } No. 146.

The undersigned commissioner, by virtue of the final decree in the above-stated cause, rendered on the day of May, 1868, at a regular term of the circuit court of said county, begs leave to report as follows:

443 That the lands ordered by said decree to be sold were duly advertised as required by said decree, and were by your commissioner sold in lots of one hundred and sixty acres and less, in accordance with its provisions, on Monday, April 15th, 1878, to wit: S. ½, section 9; NE. ¼ & S. ½ of NW. ¼ & S. ½, section 10; W. ½ of NE. ¼ & NW. ¼ & S. ½, section 11; all section 14; N. ½ & E. ½ of SE. ¼, section 15; N. ½ & SE. ¼, section 23; & W. ½, section 24; all in township 9, range 4 west, lying and being in Yazoo County and State of Mississippi, to Robert G. Hudson and C. C. Ewing, at and for the sum of two hundred and ninety-three dollars, that being the highest and best bid therefor.

Your commissioner further states that said Robert G. Hudson and C. C. Ewing, the purchasers of the foregoing lands are the beneficiaries, and owners of the decree in this case, and that no money has been paid for said purchase to your commissioner, and your commissioner has executed

444 a proper deed for said lands to said purchasers.

All of which is respectfully submitted.

H. L. TAYLOR,
Sh'ff & Com'r.

Filed Jan'y 6, 1879. G. M. Powell, cl'k, by N. T. Pugh, d. c.

TUESDAY, *March 25th*, 1879.

CHRISTOPHER TODD *vs.* W. B. PARTEE ET AL. } No. 146.

Ordered, that the motion of H. L. Taylor, commissioner in this case, for confirmation of his report of the sale of the lands described in the final decree in this case, be, and the same is hereby, sustained & said report confirmed.

STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court in and for the county

and State aforesaid, do hereby certify that the foregoing 28 pages
445 contain a true & complete copy and transcript of the final record of a certain cause in the chancery court of said county, wherein Christopher Todd was complainant and William B. Partee & Sarah D. Partee, his wife, were defendants, & numbered 146 on the general docket of said court, together with the report of the commissioner appointed by said court to sell the lands designated in the bill & final decree in said cause & described in said report, and also the order of said court confirming said report as fully & completely as the same appears and remains of record, & on file in our said court. I further certify that, except the report of said commissioner of the sale of said lands, none of the papers in said cause, after diligent search & enquiry made by me for the same, can be found in my office or elsewhere.

Given under my hand & the seal of said court at office in Yazoo City, county and State aforesaid, this 1st day of July, A. D. 1879.

[SEAL.] G. M. POWELL, *Clk.*

446 Exhibit No. 7 to said answer is in the words & figures following, to wit:

447 THE STATE OF MISSISSIPPI,
Yazoo County:

Pleas and proceedings at a special term of the honorable chancery court of said county, begun and held on Monday, January 8th, A. D. 1877, at the court-house of said county, before his honor E. G. Peyton, chancellor of the 9th chancery district of said State, in the following-entitled cause, viz:

JAMES D. PARTEE
vs. } No. 281.
EDWARD DRENNING ET AL.

Be it remembered that, heretofore, to wit, on the 12th day of January, 1877, the same being a day in said term of said court, came on to be heard and tried the above-stated cause, upon the motion of defendants to dissolve the injunction granted and issued in said cause, all of the papers and proceedings of which suit are in the words and figures following, to wit:

Original bill.

448 To the chancellor of the twelfth chancery district of the State of Mississippi:

Humbly complaining showeth unto your honor your orator, James D. Partee, of the county of Yazoo and State of Mississippi, that one James Dick, of the city of New Orleans & and State of Louisiana, died in the year one thousand eight hundred & forty-nine; and just previous to his death he made his last will and testament, which was duly admitted to probate in the State of Louisiana, as well as in the State of Mississippi; your orator states & charges the fact to be, that by said last will & testament said James Dick devised & bequeathed to one Sarah D. Partee, wife of William B. Partee, of the county of Yazoo & State of Missis-

sippi, a certain plantation known as "No Mistake," the same containing about one thousand acres, with all the stock, implements, improvements, &c., thereto belonging. Your orator further states & charges the fact to be, that said Sarah D. Partee, with her said hus-
449 band, William B. Partee, went into possession of said property so devised and bequeathed, & cultivated the same for a number of years. That with the proceeds and profits of said "N' Mistake" plantation, said Sarah D. Partee, with her said husband, purchased other lands in the vacinity, & other mules, negroes, implements, &c.; that said other lands adjoining "No Mistake" plantation, and are divided into separate tracts, being known as the "Lake Dick," "Tyrone," and "Seven Gums" plantations. And your orators would further show unto your honor that the aforesaid devise & bequest by said James Dick, deceased, to said Sarah D. Partee, was made upon the express terms & condition that she, said Sarah D. Partee, should pay to one Christopher Todd & his wife, of Columbia, Tennessee, the sum of one thousand dollars per annum, & that on the death of one or the other of them said sum of one thousand dollars should be paid to the survivor; said wife of
450 Christopher Todd, deceased, died in the year 1456; said annuity was made a special lien & charge upon said lands; that said Sarah D. and William B. Partee, as your orator is advised, faithfully paid said annuity up to the first day of January, A. D. 1861, & that after that time they neglected & failed to pay any part of said annuity; that on the 18th day of November, A. D. 1867, said Christopher Todd filed his bill in the chancery court of Yazoo County to have said sold to pay the arrears of said annuity; that after filing his said bill, and before obtaining a decree for the sale of said land, said Christopher Todd died, & Edward Drenning was appointed a special administractor for prosecuting said suit; said Drenning duly obtained a decree for said sale, & is now about to sell said "No Mistake" plantation to satisfy the same. The amount of said decree is seven thousand six hundred and eighty $\frac{04}{100}$ dollars, less a
451 credit of five hundred dollars in cash paid Jan'y 4th, 1869, with interest from the date thereof, June 8th, A. D. 1868. And your orator would further show unto your honor that on the 6th day of June, A. D. 1866, one James Stewart, of the city of New Orleans, obtained a judgment against said William B. and Sarah D. Partee, in the circuit court of Yazoo County, for the sum of six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars, & that the lands of said Sarah D. Partee, including the "No Mistake" plantation, were levied on to satisfy said judgment, & after duly advertizing the same, the sheriff of Yazoo County, one Samuel M. Dyer, on the 4th day of January, A. D. 1869, sold the same in all respects according to law, said sale being, at public auction, to the highest bidder, for cash, in front of the court-house door of Yazoo County, your orator being the purchaser of said "No Mistake" plantation at the price
452 of five hundred and fifty dollars, that being declared the highest and best bid for same. And your orator would further show unto your honor that said Samuel M. Dyer, sheriff as aforesaid, made your orator a deed for said land so purchased by him, which deed is now of record in the said county of Yazoo, in book W, page 388; a copy of the same is filed herewith & made a part of this bill. And your orator would further show unto your honor that said Christopher Todd, died seized &

possessed of a solvent estate, valued over & above all debts & liabilities, & of which one Fleming, of Columbia, Tenn., is executor, at thousand dollars; that his heirs at law are Mary R. Lester, wife of Sterling Lester, of Hinds County, Mississippi; Ann Jane Wallis, of New Orleans, Sarah D. Partee, wife of William B. Partee, of Yazoo County, Mississippi; Susan Looney, wife of A. M. Looney, of Columbia, Tennessee, all of whom are his children; that another daughter, Margaret, wife
453 of Charles Calhoon, died, leaving surviving her her said husband & two sons, Christopher Calhoon and N. D. Calhoon; that another daughter, Eliza Brown, who died, left surviving her husband, William H. Brown, & several minor children; how many & their names are to your orator unknown. All of these last-named parties reside in the town of Columbia, & State of Tennessee.

And your orator would show unto your honor that he has for a valuable consideration purchased the interest of Sarah D. Partee in the estate of Christopher Todd, deceased, and that he has also purchased the interest of said Christopher Calhoun in the same, also for a valuable consideration. That it is uncertain at this time whether there are four or five heirs, and a suit is now pending in Tennessee, in which that question is to be settled; that consequently your orator is unable to say with any confidence
454 what is the value each of the respective shares or interests of said heirs purchased by him. And your orator would further show unto your honor that the sheriff of Yazoo County was appointed by the Yazoo chancery court a commissioner to execute the decree rendered in the case of Edward Drenning, as administrator of Christopher Todd, deceased, vs. William B. and Sarah D. Partee, & that said sheriff and said Edward Drenning are about to proceed & sell said land to satisfy said decree, & that they will sell the same unless restrained by the decree of this hon. court.

And your orator would further show unto your honor that it could possibly serve no good purpose to sell said land at this time, while the question remains undetermined whether there are four heirs or five to the estate of said Christopher Todd, deceased, & while said estate
455 remains unsettled; that the claims purchased by your orator, the interests of Sarah D. Partee & said Christopher Calhoon in the estate of said Christopher Todd, deceased, are, as he is advised, equitable set-offs, & it is impossible for him to know how much they are worth until the estate of said Todd is settled up & the aggregate value is determined, and whether the same is to be divided into four or five parts; that he should not be compelled to pay what he owes the estate of Todd until his own claims are allowed; that such payment could do no good until this controversy as to the number of heirs is settled, as there could be no distribution of the estate; that he is advised and believes that the claims he holds will be equal to two-thirds or three-fourths of the amount of said decree, and that it would be unequitable and unjust to compel him, as said Drenning and said sheriff insist he shall do, to pay the said decree
456 in full without credit; that if said land is sold now it would be sacrificed, as there is a great scarcity and dearth of money in the country, & that no worse time could be selected for selling than now, or at another time during the dull season of the summer months; that no one would be benefited by such a sale, & the interests & rights of your orator

would be sacrificed for nothing, all which actings & doings are contrary to equity & good conscience, & tend manifestly to the injury & oppression of your orator in the premises.

In consideration whereof, & for as much as your orator is remediless at & by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable & relievable. To the end, therefore, the said Sterling Lester and Mary R. Lester, his wife; Ann Jane Wallis, of New Orleans; William B. Partee and
457 Sarah D. Partee, his wife; A. M. Looney and Susan Looney, his wife; Charles Calhoon and N. D. Calhoon, William H. Brown, and the minor children of William H. Brown and Eliza Brown, his wife, who is now dead—the age, sex, and number of said children being to your orator unknown—and Edward Dremning, special administrator as aforesaid, and Frank P. Hilliard, sheriff of Yazoo County, and by virtue of his office commissioner to execute said decree, and said Fleming, executor-in-chief of the estate of said Christopher Todd, dec'd, may upon their several & respective corporal oaths full, true, direct, & perfect answers make to the several allegations of this bill. And that your honor may order an account of the assets of said estate to be taken as soon as it is practicable, to ascertain the aggregate value thereof, & the value of the interests purchased
458 by your orator, that a balance may be struck between him & the said executor of said administrator of said estate, as representative & trustee of the other parties in interest, & that an injunction may issue restraining said Edward Dremning & said Frank P. Hilliard from any further proceedings under & by virtue of said decree, until said account is taken, or the value of said interests so purchased by your orator, as well as the aggregate value of the estate of said Christopher Todd, dec'd, is definitely known, and for such other, further, & general relief as to your honor may seem meet & in accordance with equity & good conscience.

May it please your honor to grant unto your orator the writ of subpœna & order of publication issuing in proper & usual form to bring the parties defendant before this hon. court, that they may abide by, do, and perform such order & decree as may be made. And your orator will ever pray, &c.

J. C. PREWETT, *Solicitor.*

459 Let the injunction issue as prayed for by complainant on his entering into bond conditioned according to law in the sum of two hundred dollars.

To the clerk of the chancery court of Yazoo County.

W. BEN. CUNNINGHAM,
Judge 14 *Jud'l Dist. Mississippi.*

Filed July 18th, 1870. S. Gallinger, cl'k.

NOTE BY THE CLERK.—The deed from the sheriff to complainant, James D. Partee, referred to in the foregoing bill & made a part thereof, is not on file among the papers in this cause, and, to the best of my knowledge & belief, never was filed or became a part of said papers.

G. M. POWELL, *Clerk,*
By N. T. PUGH, *D. C.*

Injunction bond.

Know all men by these presents, that we, James D. Partee and
460 are held and firmly bound unto Edward Drenning, adm'r of Christopher Todd, deceased, in the sum of two hundred dollars, the payment of the same well and truly to be made by us, our heirs, executors, administrators, & assigns, as witness our hands and seals this day of July, A. D. 1870.

The condition of this obligation is as follows: Whereas said Edward Drenning, administrator as aforesaid, on the 8th day of June, A. D. 1868, obtained a decree in the Yazoo chancery court against William B. and Sarah D. Partee, which was made a special lien and charge upon the "No Mistake" plantation, which said James D. Partee afterwards purchased at sheriff's sale under a judgment against said William B. and Sarah D. Partee; and whereas said James D. Partee has filed his bill in the Yazoo chancery court praying an injunction for certain causes in said bill set
461 out against the enforcement of said decree, which injunction has been ordered by a competent officer: Now, if said James D. Partee shall well and truly satisfy to said Edward Drenning, adm'r as aforesaid, all such costs and damages as he may sustain by the wrongful suing out of said injunction then this obligation to be void; otherwise of full force and virtue.

JAMES D. PARTEE. [SEAL.]
W. B. PARTEE. [SEAL.]
W. A. HANLIN. [SEAL.]

Approved July 18th, 1870.

S. GALINGER, *Clk.*

Filed July 18th, 1870. S. Galinger, cl'k.

NOTE BY THE CLERK.—It appears from the dockets of this court that a writ of injunction as prayed for in the bill in this case, and also a writ of summons to five defendants herein, were issued on the date of the filing of said bill and directed to the coroner of Yazoo County, and by
462 said coroner returned duly executed; but neither of said writs are now on file in my office among the papers in said case, nor can the same be found by me after diligent search and inquiry therefor.

G. M. POWELL, *Clk,*
By N. T. PUGH, *D. C.*

Chancery Summons.

THE STATE OF MISSISSIPPI:

Chancery court of Yazoo County.

To Edward Drenning, adm'r, &c., and F. P. Hilliard, greeting:

For certain causes offered before us, in our court of chancery of said county, we command and strictly enjoin you that, laying all other matters aside, and notwithstanding any excuse, you personally appear at a court of chancery to be holden at the court-house in Yazoo City on the first Monday of October, A. D. 1870, to answer bill of complaint exhibited against

you and others, by James D. Partee, complainant in our said court,
463 and further to do and receive what our said court shall have considered of this behalf; and this you shall in no wise omit, under the penalty of one hundred dollars, as well as the consequence that may fall thereon; and have then and there this writ.

Issued 18th day of July, 1870.

[SEAL.] S. GALINGER, *Clerk*,
By N. T. PUGH, *D. C.*

To the coroner of Yazoo County to execute and return.

Coroner's return.

Executed Aug. 15th, 1870, personally, on the within-named Edward Drenning, adm'r, &c., & F. P. Hilliard, sh'ff, &c., & by delivering to them each a true copy of this writ.

M. W. SMITH, *Coroner.*

NOTE BY THE CLERK.—There is no proof of publication of notice to the non-resident defendants in this case, nor of proof of mailing notice
464 to them on file in my office among the papers in said cause, and cannot after diligent search by me be found. I further state that to the best of my knowledge & belief no such publication was ever made, as no order of same appears upon the minutes nor any mention of the filing of such proofs upon the docket of said chancery court.

Affidavit of Jas. D. Partee.

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, Wm. Richards, a justice of the peace, in & for said county, James D. Partee, who states on oath that the allegations contained in the bill of complaint (of which this affidavit forms a part) exhibited in the chancery court by said James D. Partee vs. Edward Drenning, adm'r, e' al, so far as he states them upon his own knowledge he knows them to be true, & that so far as he states them on the
465 knowledge of others he believes them to be true.

JAS. D. PARTEE.

Sworn to and subscribed before me this 25th day of , A. D. 1870.
WM. RICHARDS, *J. P.* [SEAL.]

Filed Aug. 29, '70. S. Galinger, cl'k, by N. P. Pugh, d. c.

Notice of motion to dissolve injunction.

In chancery court of Yazoo County, Mississippi.

JAMES D. PARTEE
vs } Ch. 281
EDWARD DRENNING, ADM'R, &C., ET AL.

The complainant James D. Partee, in the above stated or J. C.

Prewett, his solicitor, will please take notice, that on Wednesday, the 13th day of August, A. D. 1870, before the honorable J. J. Hooker, chancellor of the twelfth chancery district of Mississippi, at chambers, in the town of Lexington, Mississippi, I will move to dissolve the injunction in said cause upon the following grounds, to wit:

466 1st. Because said injunction was improperly granted.

2nd. For the want of equity upon the face of the bill, and for other causes to be stated on the hearing of said motion.

EDWARD DRENNING, *Adm'r, &c.*,
Per R. BOWMAN, *Att'y, &c.*

JULY 18th, 1870.

Sheriff's return.

Executed August 18th, 1870, personally, on J. C Prewett, att'y, & by delivering to him a true copy of this notice.

F. P. HILLIARD, *Sh'ff,*
By THOS. SMITH, *D. S.*

Filed Aug. 18th, '70. S. Galinger, cl'k, by N. P. Pugh, d. c.

Agreement of counsel.

In chancery court of Yazoo County.

JAMES D. PARTEE
vs.
EDW'D DRENNING, ADM'R, &C.

It is agreed in the above-stated cause, that the motion to dis-
467 solve the injunction be taken on any day by his honor J. J. Hooker, chancellor, &c. August 31st. 1870.

(No filing.)

R. BOWMAN.
J. C. PREWETT.

Affidavit of J. C. Prewett.

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before Solomon Galinger, clerk of the chancery court of Yazoo County, J. C. Prewett, who states on oath that the fiat for the injunction in the case of James D. Partee vs. Ed. Drenning, adm'r, &c., et als., was signed by Hon. W. Ben. Cunningham, on the 24th day of June, A. D. 1870, & before the repeal of the injunction law of 1866, by the legislature. That although the bill was filed on the 18th of July, & process issued on that day, the fiat was signed by Judge Cunningham on the day & year aforesaid.

J. C. PREWETT.

Sworn to and subscribed before me this 17th day of September.
[SEAL.] S. GALINGER, *Cl'k,*
By N. T. PUGH, *D. C.*

468 Filed Sept. 17th, 1870. S. Galinger, cl'k, by N. T. Pugh, d. c.

Chancery summons.

THE STATE OF MISSISSIPPI:

Chancery court of Yazoo County.

To Jas. D. Partee, greeting:

For certain causes offered before us, in our court of chancery of said county, we command and strictly enjoin you that, laying all other matters aside, and notwithstanding any excuse, you personally appear at a court of chancery to be holden at the court-house in Yazoo City, on the first Monday of October next, A. D. 1870, to show cause, if any you can, why the motion of Edw'd Drenning, adm'r, &c., of Christopher Todd, for new security on the injunction bond in this cause, should not be granted, and further to do and receive what our said court shall have considered of this behalf; and this you shall in no wise omit, under the penalty of one
469 hundred dollars, as well as the consequence that may fall thereon and have then and there this writ.

Issued 27th day of September, 1870.

[SEAL.] S. GALINGER, *Clerk.*

To the sheriff of Yazoo County to execute and return.

Sheriff's return, &c.

Rec'd Sept. 27th, 1870.

F. P. HILLIARD, *Sh'ff,*
By SMITH, *D. C.*

Executed Sept. 28th, 1870, personally on the within named James D. Partee & by delivering to him a true copy of this writ.

F. P. HILLIARD, *Sh'ff,*
By M. V. GRISSON, *D. C.*

Order overruling motion to dissolve injunction.

FRIDAY, *October 7th*, 1870.

JAMES D. PARTEE
vs.
470 EDWARD DRENNING, ADM'R, &C., ET AL. } No. 281.

The motion by Edward Drenning, administrator of Christopher Todd, deceased, to dissolve the injunction heretofore granted in this cause, coming on this day to be heard, and the same having been fully heard and considered by the court, it is ordered, adjudged, and decreed by the court that said motion be, and the same is hereby, overruled.

Order for new security on injunction bond.

SATURDAY, *October* 15*th*, 1870.

JAMES D. PARTEE,
vs.
EDWARD DRENNING, ADM'R, &C. } No. 281.

Motion by Edward Drenning, adm'r, &c., of Christopher Todd, for new security on the injunction bond in this cause, which motion being heard and considered by the court, it is hereby ordered, adjudged, & decreed that, a new bond, in the sum of four thousand dollars, to be approved by the clerk of this court, be, and the same is hereby, required to be
471 given within forty days, in the matter of the injunction in this cause; and in default thereof said injunction be and stand dissolved.

Injunction bond.

Know all men by these presents that we, James D. Partee and are held and firmly bound unto Edward Drenning, administrator of Christopher Todd, deceased, in the sum of four thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, & assigns, jointly, severally, & firmly by these presents. Sealed and dated this 17th day of November, A. D. 1870.

The condition of this obligation is as follows: Whereas, on the 15th day of October, A. D. 1870, the Yazoo chancery court directed & ordered that James D. Partee, who is compiainant in a certain cause now pending in said court, in which Edward Drenning, administrator as afore-
472 said, & others are defendants, should give a new bond in said cause in the sum of four thousand dollars within forty days from the date of said order, to wit, the 15th day of October, 1870, & that in default thereof the injunction granted in said cause should be and stand dissolved. Now if said James D. Partee, complainant as aforesaid, shall well and truly pay to said Edward Drenning, administrator as aforesaid, all such damages & costs as may be awarded against him, or which said Drenning, administrator, &c., may otherwise suffer & sustain by reason of the suing out of said injunction, in case the same shall be dissolved, this obligation is to cease, determine, and become void; otherwise the same is to remain in full force & virtue.

J. D. PARTEE. [SEAL.]
NELSON, LAMPHIER & CO. [SEAL.]
[SEAL.]

473 To any person or persons who may sign the foregoing bond we will hold them harmless against any and all loss whatsoever.

NELSON, LAMPHIER & CO.,
No. 56 Canal st., New Orleans.

NOV. 17TH, 1870.

STATE OF LOUISIANA,
Parish of Orleans:

Before , a commissioner of the State of Mississippi, resid-

ing in the city of New Orleans, State of Louisiana, duly qualified according to law, this day personally appeared , who state on oath that each of them are worth the penalty of the foregoing bond in property in the State of Mississippi exempt from all liabilities & all exemptions.

. [SEAL.]
. [SEAL.]
. [SEAL.]

Sworn to and subscribed before me this day of November, A. D. 1870.

(No signatures; no filing.)

Injunction bond.

Know all men by these presents that we, James D. Partee and
474 S. O. Nelson, J. S. Lamphier & Sam'l Friedlander, are held and firmly bound unto Edward Drenning, administrator of the estate of Christopher Todd, deceased, in the sum of four thousand dollars, the payment of which, well & truly to be made, we bind ourselves, our heirs, executors, administrators, & assigns, jointly, severally, & firmly by these presents. Sealed with our seals, & dated this 18th day of Nov'r, A. D. 1870.

The condition of this obligation is as follows: Whereas the above-bound James D. Partee was ordered by the chancery court of Yazoo County, State of Mississippi, to give a new injunction bond in the sum of four thousand dollars, in the case of James D. Partee vs. Edward Drenning, administrator of Christopher Todd, deceased, now pending in said court, said order being made on the 15th day of October, A. D. 1870, and said bond to be given & approved by the clerk of said court within forty days from the date of said order, in default of which the injunction
475 granted in said case to be and stand dissolved. Now, if said James D. Partee should pay to said Edward Drenning, administrator as aforesaid, all damages and costs which may be awarded against him or which said Drenning may sustain by reason of the wrongful suing out of the injunction in said cause, this obligation is to be void; otherwise to remain in full force & virtue.

JAMES D. PARTEE. [SEAL.]
S. O. NELSON. [SEAL.]
J. S. LAMPHIER. [SEAL.]
SAM'L FRIEDLANDER. [SEAL.]

STATE OF LOUISIANA,
Parish of Orleans:

Before me, William Shannon, a commissioner of the State of Mississippi, residing in New Orleans, State of Louisiana, personally appeared Samuel Friedlander, who state' on oath that he is worth the sum of four thousand dollars in property in the State of Mississippi over and
476 above all liabilities & exemptions. (One word interlined & 3 eraced.)

SAM'L FRIEDLANDER.

Sworn to & subscribed before me this 24th day of November, A. D. 1870.

[SEAL.] WILLIAM SHANNON, *Com'r.*

Approved. Filed Dec. 1st, 1870. S. Galinger, cl'k.

Affidavit of E. Drenning.

STATE OF MISSISSIPPI,
Yazoo County:

Before me, S. Galinger, clerk of the chancery court of Yazoo County, Mississippi, personally appeared Edward Drenning, who on oath says that the commercial firm of Nelson, Lamphier & Co. have not in the State of Mississippi as he verily believes visible property, subject to execution, sufficient to satisfy the amount of the bond for an injunction in chancery cause No. 281 in favor of James D. Partee vs. Edward Drenning,
477 administrator of Christopher Todd, deceased; that said Nelson, Lamphier & Co. are non-residents of the State of Mississippi, and are residents of the city of New Orleans, in the State of Louisiana, and have no property in the State to satisfy said bond, if judgment thereon was rendered against them.

E. DRENNING.

Sworn to and subscribed before me this 3d day of April, A. D. 1871.
S. GALINGER, *Cl'k,*
By N. T. PUGH, *D. C.*

Filed Ap'l 3rd, 1871. S. Galinger, cl'k, by N. T. Pugh, d. c.

Answer of Edward Drenning.

The answer of Edward Drenning to a bill of complaint exhibited against him, as administrator of Christopher Todd, deceased, by James D. Partee, in the chancery court of Yazoo County, Mississippi.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors & mis'tatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised
478 is material for him to answer, answering, says:

That he admits the will and devise of property by James Dick to said Sarah D. Partee, and the charge thereon *on* to respondent's intestate & wife as charged in the said bill, except in this, that said "No Mistake" plantation contains instead of one thousand acres of land two thousand or more. Admits the failure to pay the an'uity to Christopher, deceased; the suit of said Todd in the chancery court of Yazoo County; his death; the appointment of respondent as his administrator; the decree, and the intended sale of "No Mistake" plantation for the satisfaction of said decree. Admits the judgment of Stewart, which respondent says was rendered in the circuit court of Yazoo County, Mississippi, on the day of , 186 , for the sum of $. Admits the sale under said judgment.

479 Respondent, further answering, says that at the time of the sale

under said judgment Sarah D. Partee, the wife of said William B. Partee, was indebted in a very large amount, exceeding one hundred thousand dollars, and judgments had then been rendered against her separate property in the circuit court of Yazoo County, Mississippi, to an amount exceeding fifty thousand dollars; that said William B. Partee, her husband, owned and claimed no property in his own name and right; that another plantation, called "Lake Dick," owned by said Sarah D. Partee, was sold under said judgment of Stewart at the same for $, at said sheriff's sale.

Respondent, further answering, says that he is informed and believes that the money with which said James D. Partee purchased said "No Mistake" plantation, was obtained and procured by and through the instrumentality & negotiations of said W. B. Partee, his father, and
480 that said James D. Partee was acting as a purchaser of said plantation by & under the direction of his father, and that said "No Mistake" plantation was purchased in his name to secure the same from the creditors of said Sarah D. Partee; admits the deed by the sheriff of Yazoo County to *respondent*; admits the death of the wife of Christopher Todd as stated; admits the heirs of Christopher Todd as stated; neither admits nor denies that Fleming is the administrator of Christopher Todd, deceased; neither admits nor denies the pendancy of said suit in Tennessee, as he has no personal knowledge thereof, and if to be affected in any manner thereby requires strict proof.

Respondent, further answering, says that he is informed and believes that said James D. Partee never in fact paid anything for the distributive interest of said Sarah D. Partee & Christopher T. Calhoon in the estate of said Todd, deceased.

481 Respondent says that said complainant is the son of said Sarah D. & W. B. Partee, and with the view and interest of securing her interest or share in said estate of Christopher Todd, deceased, there may have been a formal transfer of her interest in said estate to him, but it was, as he is informed and believes, merely simulated for the purposes aforesaid; respondent is informed and believes that to carry out said simulation and to protect her interest in said estate of Christopher Todd, deceased, that said alleged transfer or assignment thereof was made, as he is informed and believes.

Respondent, further answering, says that he is informed and believes that W. B. Partee, the father of complainant, or the said complainant himself, by illusory promises induced said Christopher Calhoon to transfer & assign his interest in the estate of respondent's intestate with the
482 avowed purpose or object of using the same as set-off to said decree, that said Calhoon was promised an immediate payment on said transfer or assignment, but as soon, or immediately after, the same was obtained, said complainant went back on his promises and refused to pay him anything, and has never to this day paid said Calhoon anything.

This respondent, further answering, says that these devices, as he believes, were for the purpose of hindering and delaying this respondent from the enforcement of said decree, and to prevent those interested in the estate of said Christopher Todd from receiving their just distributive share thereof.

Respondent admits the solvency of Christophers Todd's estate; admits the sheriff of Yazoo was appointed a commissioner to sell said lands under

said decree, and that at the time of filing said bill, that said com-
483 missioner was about to sell the same for the satisfaction thereof.

Denies that the alleged claim of *respondent*, for the reasons before stated, are an equitable set-off against said decree; denies that said alleged claims pretended to be held by complainant are equal to two-thirds or three-fourths of the amount of said decree. Respondent says that by said bill it appears that even if complainant's alleged claim is valid, and it should be decided by said alleged suit in Tennessee that there are only four instead of five distributees of the estate of Christopher Todd, yet these complainants' interest would be only one-fourth & one-twelfth, or one-third of said decree.

Respondent, further answering, says that he denies that there are no good reasons for the enforcement of said decree, at least for the amount thereof, less the said pretended interest of said complainant, for the following reasons:

484 1st. This respondent, as administrator of said Christopher Todd, has incurred costs for the administration of his estate, and he is advised that he is entitled to collect out of the assets of his intestate, a sufficient amount for the payment thereof.

2nd. This respondent, as administrator aforesaid, has incurred a liability for costs in the suit in said bill mentioned, for said decree and attorney's fees therein, as well as in this suit.

3rd. That he has given bond with security, as administrator aforesaid, and desires to settle up said estate in this State as speedily as possible, so as to relieve himself of the responsibility of his office as administrator, & his sureties of their liability on his bond.

485 4th. That said estate of Christopher Todd being solvent, notwithstanding said suit in Tennessee, he is advised that he could, or the administrator in Tennessee could, if the money were paid to him, safely make distribution thereof, reserving an amount sufficient to meet the contingencies of said suit.

That said complainant, against the avowed wish and desire of the other distributees of said estate of Christopher Todd, by reason of the injunction in this cause, is retaining and using their distributive share thereof; respondent is informed and believes that some of the distributees of his intestate are in great need of their share of said decree.

6th. That said "No Mistake" plantation is very valuable, well improved, with steam gin and mill, about eight or nine hundred acres cleared, being worth from seven to ten dollars per acre rent annually, thus
486 yielding an income wholly uncommensurate with the rate of interest, being only six per cent. on said decree, thus working a hardship & oppression on the other distributees.

7th. That if said decree was enforced by sale of said lands, if the alleged claim of said complainant was illegal and *valid*, this respondent is advised that he would be entitled to have paid his proper share thereof if purchased by a third party, or if purchased by said complainant; that if entitled to a credit for said alleged claims against said estate, he could have the same credited on the amount of his purchase.

8th. That said lands constituting the "No Mistake" plantation are very valuable, and at the least calculation are worth from fifteen to twenty thousand ; so that it would require only a portion thereof to settle said de-

cree; that said decree in favor of this respondent as administrator
487 was rendered on the day of , 1867, and the sale under said judgment of Stewart was on the day of , A. D. 1869, so that said complainant has had for over two years the use and enjoyment of respondent's security for the amount of said decree, and has by various devices defeated and prevented the collection thereof. Nearly four years this respondent has had in his hands the responsibility of said administration under a heavy bond, with security, and for all of his trouble, responsibility, and liability for costs, &c., has never received one dollar of compensation, and he is extremely desirious of closing out this matter. The said complainant does not alledge in his bill any sum of the estate *of the estate* of Christopher Todd, deceased, in the State of Tennessee. The rents of said "No Mistake" plantation, this respondent is informed and believes, since it has been in complainant's possession, & since
488 said decree, would have more than paid the amount of said decree if complainant had been disposed to pay it. The costs of said decree are yet unpaid, as also a part of the solicitor's fees, as well as the costs of administration, and this respondent has no means or assets of his intestate to pay the same outside of said decree.

Having fully answered this respondent prays to be hence dismissed with his costs, &c.

BOWMAN.

STATE OF MISSISSIPPI,
Yazoo County:

Before me, S. Galinger, clerk of the chancery court of Yazoo County, Mississippi, personally appeared Edward Drenning, the defendant in the foregoing answer, who on oath says that the matters and facts therein stated as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

E. DRENNING.

489 Sworn to and subscribed before me April 3rd, 1871.

S. GALINGER, *Clk*,
By N. T. PUGH, *D. C.*

Filed Ap'l 3rd, 1871. S. Galinger, clerk, by N. T. Pugh, d. c.

Order of continuance.

WEDNESDAY, *April* 12, 1871.

JAMES D. PARTEE
vs. } No. 281.
EDWARD DRENNING, ADM'R.

Motion to dissolve or modify the injunction in this cause for the want of sufficient bond as required by order of this court; which motion being heard and considered by the court, it is ordered that this cause be, and the same is hereby, continued to the next term of this court.

Order to set aside continuance.

SATURDAY, *April 15th*, 1871.

JAMES D. PARTEE
vs.
E. DRENNING, ADM'R. } No.

490 Motion to set aside the continuance of the motion to dissolve or modify the injunction in this case for insufficiency of bond, and for the withdrawal of said motion to dissolve or modify said injunction, which motion being heard and considered the court, the same is hereby granted.

Agreement.

It is agreed upon the payment of two thousand dollars in cash by James D. Partee to Edward Drenning, administrator of Christopher Todd, deceased, that the sale under the decree of said Drenning, adm'r, &c., vs. W. B. & S. D. Partee shall be suspended until the determination of a suit now pending in County, Tennessee, wherein is involved the rightful distributees of said Christopher Todd's estate, provided the said Edward Drenning is not required by legal necessity to avoid personal liability to proceed under said decree.

R. BOWMAN,
Attorney for N. D. Wallace et al.
E. DRENNING,
Adm'r C. Todd.

491 YAZOO CITY, *April* 19, 1871.

Filed June 8th, 1871. S. Galinger, clerk, by N. T. Pugh, d. c.

Receipt of E. Drenning.

Rec'd of James D. Partee two thousand dollars, the same to be a credit on the decree in the case of Edward Drenning, adm'r of Christopher Todd, deceased, vs. W. B. & S. D. Partee, in the chancery court of Yazoo County, Mississippi. And it is agreed, in consideration of this payment of $2,000, that all proceedings under said decree shall be suspended until the determination of the suit now pending in Tennessee, wherein is involved the rightful distribution of the estate of said Christopher Todd, provided said Edward Drenning is not required by legal necessity to avoid personal liability to proceed under said decree.

Yazoo City, April 19th, 1871.

E. DRENNING,
Adm'r C. Todd's estate.
J. C. PREWETT.

(Signed in duplicate.)

492 Filed June 8th, 1871. S. Galinger, cl'k, by N. T. Pugh, d. c.

Agreement to dissolve injunction.

In chancery court of Yazoo County, Mississippi.

JAMES D. PARTEE
vs.
EDWARD DRENNING ET AL. } Ch. 281.

It is agreed that the injunction heretofore granted in this case be, and the same is, dissolved without order or decree of the chancery court, and that the sale under the decree in case of Edward Drenning, adm'r of Christopher Todd, deceased, vs. Wm. B. and Sarah D. Partee, rendered in the chancery court of Yazoo County, Mississippi, may proceed without prejudice on account of said injunction in above-stated case.

Oct. 28th, 1876. (No filing.)

JAS. D. PARTEE.

Agreement to dissolve injunction.

In chancery court Yazoo County, Mississippi.

JAS. D. PARTEE
vs.
E. DRENNING ET AL. } No. 28 .

493 It is agreed that the injunction heretofore granted be dissolved without further notice.

JAS. D. PARTEE.

Filed Jan'y 10th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

Order dissolving injunction.

FRIDAY, *January 12th*, 1877.

JAMES D. PARTEE
vs.
E. DRENNING, ADM'R, &C. } No. 281.

The motion by defendants to dissolve the injunction in this case, as per agreement on file, having been heard and considered by the court, it is ordered, adjudged, & decreed that said injunction be, and the same is hereby, dissolved.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court in and for the county & State aforesaid, do hereby certify that the foregoing and an-
494 nexed 39 pages contain a true and complete transcript of all the papers, pleadings, and proceedings in the above and foregoing stated cause in said court as fully and completely as the same appears and remain on file and record in our said court.

Given under my hand and the seal of said court, at office in Yazoo City, county and State aforesaid, this 30th day of September, A. D. 1879.

[SEAL.] G. M. POWELL, *Clk*,
By N. T. PUGH, *D. C.*

And on the 14th day of October, A. D. 1879, the answer of E. Drenning, executor of the last will and testament of James Stewart, deceased, was filed in said cause in the words & figures following, to wit:

495 U. S. circuit court southern dist. Miss. In equity.

THE CANAL BANK ET AL. }
vs.
WM. B. PARTEE ET ALS. }

The separate answer of E. Drenning, as executor of the last will and testament of James Stewart, deceased (who died on the 23rd day of January, A. D. 1876), to the bill of revivor and supplement filed by complainants in the above-stated cause.

This respondent, saving and reserving to himself all right of exception to said bill of revivor & supplement, for answer thereto says: He is also summoned to answer as the administrator of the estate of Christopher Todd, deceased, in respect to which he states that said Todd, dec'd, was a citizen of Maury County, Tennessee, at the time of his death, and that his estate was there administered upon by W. S. Flemming, of Columbia, in said county and State; that said administration, as respondent is informed, is
496 still pending in the courts of said State of Tennessee. Respondent states further, that Christopher Todd, during his lifetime, instituted suit in the chancery court of Yazoo County, Miss., against Sarah D. Partee & William B. Partee, her husband, to recover the unpaid balance of the legacy due him by said Sarah D. Partee under the will of James Dick, late of New Orleans, La.; that during the pendency of said suit Sarah Todd died on the day of , A. D. 1868; that respondent, by request of Messrs. Wilkenson & Bowman, att'ys at law, and having charge of said chancery suit, qualified as an ancillary administrator of the estate of Christopher Todd, deceased, obtained a decree in his favor against the parties, subjecting certain lands to the payment of the same. All these matters in reference to the Mississippi estate of Christopher Todd, dec'd, are of record in the chancery court of Yazoo County, and respond-
497 ent asks leave to file a copy of the same in the court said statements are controverted.

The said decree in favor of respondent as administrator as aforesaid has been paid as follows: The sum of two thousand dollars on the 1st day of May, A. D. 1871, by James D. Partee, who was then the owner of the lands, liable for the payment of the same. Afterwards, on the 13th day of April, 1877, A. D., respondent was, by an order of the Yazoo chancery court, authorized to assign said decree to Robert G. Hudson, upon being paid the full amount due thereon. This amount, being about nine thousand dollars, was paid to this respondent by Robert G. Hudson—about seven thousand dollars at once and the balance soon afterwards, the delay being to obtain an order of court in respect thereto. This sum respondent placed in the Bank of Yazoo City to his credit as administrator as aforesaid, and remained in this

498 bank until distributed to the parties entitled to the same, who were as follows: Sarah D. Partee, C. T. Calhoon, of Yazoo County, Miss.; Susan K. Loving, A. H. Brown, & Margaret Brown, and Mrs. Sarah Alexander, of Columbia, Maury Co., Tennessee; Mrs. Anne J. Wallace, of New Orleans, La.; N. D. Calhoon, of Natchitoches, La.; and Mrs. M. R. Lester, of Jackson, Mississippi. N. D. Calhoon had assigned his claim to a commercial firm in New Orleans, and Mrs. Partee's interest was involved in litigation for a time, so that their amounts were paid not directly to them.

The estate of Todd, in Mississippi, in the manner above stated, has been fully administered, and this respondent as administrator thereon has been discharged by order of court, rendered on the 18th day of October, A. D. 1877, and his letters of administration have been surrendered. Such being the case respondent has now no authority to answer in behalf of the
499 administration of said estate of Christopher Todd, deceased. Respondent states that at the time of the institution of suit herein by complainants by their original bill he was then duly qualified and acting as the administrator of the estate of Christopher Todd, deceased, and was not made a party to said proceeding.

Respondents admits the execution of the deed in trust as stated in said bill of revivor, &c., by Sarah D. Partee and Wm. B. Partee, to secure their creditor or creditors of said Sarah D., the same being dated Nov. 19th, 1866; but respondent denies that it anywhere appears that the debts intended to be secured were such debts as a married woman could contract, and for which her separate estate would be liable, and respondent is informed and so states that said debts were not contracted for the benefit of the separate estate of said Sarah D. Partee. Respondent is advised that said
500 deed in trust is fraudulent and void because the same assumes to pay off one-half of the liabilities of said Sarah D. Partee with wild lands in Sunflower and Tallahatchie Counties, Mississippi, at the price and value of ten dollars per acre, when in fact at that time the said lands were not worth one dollar per acre, and said conveyance in trust made it incumbent upon said creditors to accept said lands at that fictitious and exaggerated value being made, being more than ten times their actual value.

Respondent further states that at the time of the execution of the said conveyance in trust in November, 1866, the said Sarah D. Partee did not own the lands described in said conveyance as lying in Sunflower & Tallahatchie Counties, but that the same had been forfeited and sold for delinquent taxes and were held and owned by the State of Mississippi, as appears by reference to the special report of the auditor of
501 public accounts published A. D. 1871.

Respondent further says that Sarah D. and Wm. B. Partee in said deed in trust reserved to themselves the benefit of a large extension of time in the payment of their debts, from one to five years, thus averaging two and one half years, being a much longer time than was necessary by the usual course of legal proceedings to enforce the payment of said debts, and that for this, if for no other cause, said deed in trust is fraudulent and void.

Respondent admits, as stated in said bill of revivor, &c., the rendition of judgment by default in favor of James Stewart and against Sarah D. Partee and Wm. B. Partee, in the Yazoo circuit court, June 6th, 1866, for the sum of $6,794.86 dollars, and states further, in respect to said judgment, that in consideration of an extention of time the said Sarah

502 D. and Wm. B. Partee gave a release of errors therein, and that afterwards, a writ of error, the said suit was revived by the high court of errors and appeals, and this release of errors being pleaded the said judgment of the court below was duly affirmed; and states further that the validity of said Stewart judgment has been litigated in the chancery court of Yazoo County between the proper parties, and a decree therein rendered confirming said judgment, and stating that the debt, which was the foundation of the same, was contracted for family and plantation supplies for the use of the separate estate of the said Sarah D. Partee; all of which will more fully appear by reference to a copy of said proceedings filed herewith, made a part of this answer, and marked "Exhibit No. 1" thereto.

Respondent admits the sale of the lands under the said Stewart judgment, as stated by complainants, but says that the "No Mistake"
503 lands, comprising the places or farms known as "No Mistake," "Tyrone," & "Seven Gums," were sold subject to the Todd decree, as was stated at the time of sale.

Respondent admits the rendition of judgment herein by the Supreme Court of the United States, April 9th, 1879, but says at that time James Stewart had long been dead, and respondent says the interests of his estate are wholly unaffected by said judgment.

Allusion having been made to the fact that the answer of James Stewart to complainants' original bill is not signed or not sworn to by him, respondent answers that James Stewart was then in Europe and there was not time to transmit the said answer and to have the same returned.

Respondent admits the matters stated in reference to the last will
504 & testament of James Stewart, deceased, and the appointment of this respondent as executor, and further admits the sale of the "Lake Dick" plantation to O. H. McCall & James A. Crouch, on August 25th, 1875, the same being the lands purchased by Stewart at execution sale as stated in complainants' original bill; the price of said lands was the sum of five thousand dollars, payable in five annual installments, and thereafter without interest until after the maturity of said payments; there was also a cash payment of $500.00, the whole place bringing at a cash estimate about the sum of thirty-five hundred dollars; the "Mound" place was included in the sale to McCall & Crouch, but was not a part of the Partee lands, James Stewart having purchased it of one John T. Heth previous to said sale, it being lot 4 of section 36, township 10, range 5 west, Yazoo
505 County. At the time of said sale James Stewart had been in possession of said lands but one year and never did collect but one year's rent before his sale to McCall & Crouch, amounting to about $300.00 dollars, subject to a payment of taxes of $70.00 dollars, and if charges and expenses of 30.00 or thereabouts, leaving the net rent of $200.00.

The said lands were held by the Partees for seven years after said execution sales, as during that time the right of Mrs. Partee to a homestead on "Lake Dick" was contested during that time; after the homestead matter was adjudicated James Stewart entered into possession of "Lake Dick," less fifty acres allotted to Mrs. Partee, and as above stated he remained in possession one year previous to his sale to McCall & Crouch.

Respondent admits the conveyance by McCall & Crouch to him
506 in trust to secure the purchase-money to James Stewart, and says said conveyance was contemporaneous with said sale to them.

Respondent is not advised as to the subsequent conveyance by McCall & Crouch, and as to them says nothing, except the sale of one acre to Robt. G. Hudson, of which he was cognizant.

Respondent is informed that said McCall & Crouch have made expensive improvements on said "Lake Dick" plantation.

Respondent says it is not true as stated in said bill of revivor, &c., that he instituted suit in the Yazoo chancery court against Sarah D. & Wm. B. Partee, to recover the Todd legacy after the death of Christopher Todd, but says that said suit was instituted by Todd himself, and that respondents administered on said estate afterwards; further respondent says that the
507 long delay of ten years in the execution of the Todd decree was owing to the fact, first, that the Partees obtained an extention of time from the beneficiaries thereunder, who were their relatives; and second, that afterwards said decree was for a long time injoined in the Yazoo chancery court; the lands were well and sufficiently designated as the "No Mistake" plantation, being the only lands owned by James Dick in that vicinity. For the causes above stated the said Todd decree was not barred at the time of the sale thereunto by the *the* statute of limitations.

As to the discovery demanded of respondent in respect to the amounts received by him as administrator of Todd, he files herewith his final accounting with Todd's estate as a part of this answer duly copied from the original final account and certified, &c., marked "Exhibit No. 2."

508 As to the rental value of the "Lake Dick" plantation, estimated by complainants at $3,000.00 per annum, respondent says this is absurd in the highest degree; that he, as the agent of James Stewart, dec'd, sold said place at an equivalent of about thirty-five hundred dollars cash in August, 1875; that since then lands have declined in value, and that for the greater part of the time since then $3,000.00 dollars would be a reasonable cash price for said place; that though said place has a large number of acres—nearly ten thousand acres—yet only about two hundred is cleared, and of the balance nearly all is low swamp land, unfit for cultivation. Of this 200 acres of cleared land, 50 acres has all the time, and is now, occupied by Mrs. Partee as a homestead. "Lake Dick" is a very low place, and, being near the confluence of the Sunflower and Yazoo Rivers, is very much subject to overflows. Its situation is on the Yazoo,
509 just above the mouth of Big Sunflower. Along the front the Yazoo tends to the eastward, and as "Lake Dick" is on the south side of the river, there is in effect a large volume of water in seasons of overflow, penning in at both ends of the tract of land, on the east from the Yazoo and on the west from the Sunflower.

As the agent of Stewart, respondent was exceedingly glad to sell the same and get it off his hands, as it is a very undesirable place.

As a further explanation of the reason of the Partees remaining in possession of "Lake Dick" for so long a time after the execution, sale, and purchase by Stewart, respondent says that Mrs. Partee claimed as her homestead exemption 240 acres of land as selected by herself, and that this 240 acres so selected comprised all the lands on said place of any value. That
510 this matter was litigated in the chancery court of Yazoo County for a long period, and was carried by appeal to the supreme court of this State. And now having fully answered, &c.

E. DRENNING, *Ex'or*, &c.

Sworn to and subscribed before me this 2nd day of August, A. D. 1879.

[SEAL.] W. H. MANGUM,
U. S. Commissioner Southern District of Miss.

[NOTE.—Exhibit No. 2 to this answer has been lost from the files & cannot be found after diligent search.

J. M. McKEE, *C'lk.*]

Exhibit No. 1 to said answer is in the words & figures following, to wit:

511 [Pages 1] THE STATE OF MISSISSIPPI,
Yazoo County:

Pleas and proceedings of the honorable chancery court in and for said county and State, began and held on Monday, the 8th day of October, A. D. 1877, at the court-house of said county, before his honor E. G. Peyton, chancellor of the 9th chancery district of said State, in the following-entitled cause, viz:

SARAH D. PARTEE ET AL.
vs. } No. 987.
E. DRENNING, EX'R, &C., ET AL.

Be it remembered that heretofore, to wit, on the 22d day of October, 1877, the same being a day in said term of said court, came on to be heard and tried the above-stated cause on bill, answer, exhibit, plea, proof, and consent of counsel, and all other papers and proceedings in said cause, all of which papers and proceedings are in the words and figures following, to wit:

512 [2] *Bill.*

To the Hon'l E. G. Peyton, chancellor of the ninth chancery district of the State of Mississippi, sitting at Yazoo City, for the county of Yazoo, and sole presiding therein.

SARAH D. PARTEE, A CITIZEN OF SAID COUNTY and State, who is joined by her husband, William B. Partee, for the sake of conformity only, exhibits this her bill in the above court
against
EDWARD DRENNING AS EXECUTOR OF THE last will and testament of the late James Stewart and O. H. McCall and James Crouch, all of whom are citizens of said county & State, defendants.

Complainants respectfully shows unto your honor as follows: That in or about the year 1851, she purchased, with her own means, the following described lands, lying in the county of Yazoo and State of Mississippi, to wit: Lots 3, 4, 5, 6, 7, and 28 acres in lot 1, section 5; all of section 6;
513 NE. ¼ section 8, towns. 9, range 4 west; W. ½ sec. 1; NW. ¼ section 2; NE. ¼ sec. 3, [3] towns. 9, range 5 west; lot 7, sec. 31. lot 7, sec. 32, towns. 10, range 4 west; lot 6, sec. 34; lot 7, sec; 35; lot 5, sec. 36, towns. 10, range 5 west; said lands being known as the

"Lake Dick" plantation. Complainant shows that after the purchase of the aforesaid land she went into occupancy and possession thereof, and thus continued for a great many years. Complainant further shows that said lands were the homestead of herself and family for a many year, & that complainant now makes her home & residence on a portion of said land; that she has been wrongfully deprived of the greater portion of said lands as she will hereafter show, and to be restored to the possession thereof is the object and purpose of this bill. Complainant further shows that on the 6th day of June, 1866, one James Stewart recovered a judgement against her in the circuit court of said county for the sum of about $6,894.86; that on the 4th day of January, 1869, the above lands, subject to complainant's right of exemption, were sold by the sheriff of Yazoo County, under a vendi issued on said judgement and were

514 [4] by said James Stewart for the sum of about five thousand dollars; that after litigation it was, by the proper tribunals, decided that complainant was entitled to a homestead exemption in the aforesaid lands, and what is called complainant's homestead was accordingly laid off to her. To fully understand the controversy here refered to, reference is made to the record and proceedings in this honorable court in the cause numbered 284, wherein said James Stewart was complainant, and *and* complainant and her said husband and one James D. Partee were defendants. Complainant now shows to the court that in the aforesaid controversy no questions were involved, except the question of the right of complainant to a homestead exemption and the quantity of land such exemption, if allowed, should contain; no question as to the validity of the aforesaid judgment was ever raised or litigated. Complainant shows unto your honor that the aforesaid judgement was in fact utterly null and void, and that the other proceed-

515 ings in connection with said judgment, [5] including the aforesaid sheriff's sale, are utterly null and void, & consequently said Stewart did not acquire nor was able to acquire any title to the aforesaid lands or any part of them. Complainant shows that said Stewart never claimed title to any part of said lands except by the aforesaid judgement and sheriff's sale. The deed from said sheriff to said James Stewart will be found recorded in book Y, pp. 383, of the record of deeds of said county. The same will be read on the hearing of this cause if deemed necessary. Complainant alleges that said judgement and sale were null and void & gave and could give no title to said lands or any part of them, for the reason that said judgement was based on a void and illegal contract. Your complainant shows that said judgement was founded on a promissory note given by complainant and her said husband, which is copied for convenience into this bill. Said note was as follows:

$5,397.87.] NEW ORLEANS, *December* 18, 1861.

Twelve months after date I promise to pay to the order of Rotch-

516 ford, Brown & Co., at their counting-house in this city, [6] fifty-three hundred and ninety-seven $\frac{87}{100}$ dolls., value received, with 8 per cent. per annum interest, after maturity, untill paid.

Authorized by me.

SARAH D. PARTEE.
W. B. PARTEE.

Complainant shows that said note was in fact executed by herself and her said husband as the note on its face purports, but complainant shows that when said note was made she was a married woman, the wife of her present husband, said William B. Partee, and that said note is not such a contract as she could legally make as a married woman, and the same is therefore void; that the record of the aforesaid judgement on said promissory note contains no evidence against complainant aliunde said note, and in said proceedings complainant is treated as if she were a feme sole, with all power to contract as such, and the judgement in said case is in the ordinary form of judgements against persons not subject to the disability of coverture. Complainant further shows that said judgement is
517 not only void because of the invalidity of said note, [17] but also because there is nothing in the record to show that complainant at the time *of* said note was given was the owner of separate property under the laws of the State, & because the judgement is a general judgement, and for other reasons on its face. A transcript of said cause in the circuit will be read on final hearing of this case. Complainant further shows that notwithstanding the invalidity of the aforesaid judgement and the sale thereunder, said Stewart, in the month of January, 1875, took possession of the greater portion of said lands under color of proceedings for laying off complainant's exemption, which matter had been in litigation as aforesaid, and since that time complainant is being wrongfully deprived of the possession of all of the aforesaid lands, except about 45 or 50 acres laid off to complainant as her homestead under the aforesaid proceedings. A description of said exemption will be found on reference to the proceedings in the aforesaid cause numbered 284 in this court. Complainant further shows that about August, 1875, said James Stewart sold
518 all [8] of the aforesaid lands except complainant's exemption to said James Crouch and D. H. McCall, who are now in possession of the same. The deed from said Stewart to said Crouch and McCall is recorded in book pp. , of the record of deeds of said county. These same will be read on the hearing of this cause if deemed necessary. Complainant further shows that on or about the day of , 1876, said James Stewart departed this life, leaving a last will and testament, and said Edward Drenning, as duly qualified as executor under authority of this honorable court.

The premises considered, and complainant being without remedy at law, and remediable only in a court of equity, prays for the following relief: That she may be declared and adjudged to be the true and lawful owner of all the aforesaid lands; that said judgment and the aforesaid sale by the sheriff, and said deed from said sheriff to said James Stewart, and from said James Stewart to said McCall and Crouch, may be cancelled as clouds upon complainant's title to aforesaid lands, and that complainant
519 [9] may have such other further additional and general relief as may be in accordance with equity and good conscience. May said Edward Drenning, executor, and said James Crouch and O. H. McCall may be made defendants to this bill and may be compelled to fully answer the same. May proper process issue commanding said defendants to be and appear at the next ensuing term of this honorable court to do, abide, and

suffer such orders and decrees in the premises as may be made by the court in the premises; and as in duty bound, &c.

J. C. PREWITT,
For Complainant.

Filed Oct. 1st, 1877. G. M. Powell, cl'k, by A. F. Pugh, d. c.

NOTE BY THE CLERK.—The plea of defendants entered and filed in the above-stated case is not now among the papers thereof on file in my office, and cannot after dilegent search and enquiry by me be found.

GEO. M. POWELL, *Clerk.*

520 [10] *Answer of defendants.*

Yazoo chancery court, Oct'r term, 1877.

SARAH D. PARTEE ET AL.
vs.
E. DRENNING ET AL.

The answer of E. Drenning, executor of James Stewart, deceased, O. H. McCall, and James Crouch to the bill of complainant exhibited against them in the above-stated case.

These respondents, saving and reserving to themselves all right of exception said bill of complainant, for answer thereto, say that they admit all matters stated in the same which appear of record, and deny all others.

That at the time, December 18th, 1861, at which the said promissory note made by Sarah D. Partee, authorized by Wm. B. Partee, was made, the said Partee and wife were residing in New Orleans, Louisiana; that the note was made then and payable then; that under the laws of said State it was a valid contract and enforc'able against said parties.

That the said Sarah D. Partee then had a seperate estate, and
521 the said debt was [11] contracted in connection with and for benefit of the said seperate estate. That after the rendition of judgement in favor of James Stewart and against said Sarah D. and Wm. B. Partee, June 6th, 1866, for the sum of $6,894.86, and when execution of the same was about to be had, that in consideration of forbearance and of further time to be allowed to them in which to realize profits from said lands, that the said Sarah D. Partee and Wm. B. Partee gave a release of all errors in the said judgement against them in favor of James Stewart; and that afterwards, having prosecuted a writ of errors to the high court of errors and appeals to revise said judgement, the same was duly affirmed, all of which will now fully appear by reference to a copy of the record of said suit filed herewith, marked "Exhibit No. 1." That after James Stewart had purchased said lands at sheriff's sale on that the said complainant continued to occupy the same under a claim of homestead exemption, claiming
240 acres; that to obtain possession of the lands James Stewart insti-
522 tuted [12] in the Yazoo circuit court an action of ejectment for the same, all of which will more fully appear by reference to the record and papers, of said ejectment suit to be read on trial of this cause. That to adjust a claim of a homestead the said James Stewart filed his bill of complaint

enjoining said homestead claim; that after very protracted litigation the said injunction against Sarah D. Partee and Wm. B. Partee was perpetuated; that said parties are restrained from setting up any claim of a homestead to any of said lands, except about the quantity of 50 acres duly allotted to them, and of which they are now in possession. All of which will more fully appear by reference to the record and proceedings in said suit No. 284 on the general docket, and to be read on trial hereof. That after James Stewart had purchased said lands at sheriff's sale under his judgement that said complainants, by protracted litigation, by bad faith, and by ingenious devices, retained possession of the same untill .

And now, having fully answered, &c., defendants pray to be dismissed, &c.

E. DRENNING,
Sol'r for Def'ts.

523 [13] STATE OF MISSISSIPPI,
County of Yazoo:

Before the undersigned, clerk of the chancery court, this day personally appeared E. Drenning, for himself and as attorney for Crouch and McCall, and make oath that the matters and things in the foregoing answer set out are true to the best of his knowledge and belief.

E. DRENNING.

Sworn to & subscribed before me this Oct. 16th, 1879.

G. M. POWELL, *Clk*,
By A. F. PUGH, *D. C.*

Filed Oct. 16th, 1877. G. M. Powell, cl'k, A. F. Pugh, d. c.

524 [14] *Exhibit No. 1 to answer of defendants.*

STATE OF MISSISSIPPI,
Yazoo County:

Be it remembered that heretofore, to wit, at the May term, 1866, of the Yazoo circuit court the following pleas and proceedings were had and done before J. A. P. Campbell, judge of the fifth judicial district of State aforesaid:

Declaration.

Circuit court of Yazoo County, May term, 1866.

STATE OF MISSISSIPPI,
Yazoo County:

James Stewart, the plaintiff in this suit, complains of Sarah D. Partee and William B. Partee, the defendants in this suit, that they are indebted to him in the sum of five thousand three hundred and ninety-seven $\frac{87}{100}$, for that, that whereas heretofore, to wit, on the 18th of December, 1861, at, to wit, the city of New Orleans, in the county Yazoo, said defendants, by their names and signatures of Sarah D. Partee & W. B. Partee, did make and deliver to Rochford, Brown & Co., at the counting-house in the

city of New Orleans, the sum of fifty-three hundred & ninety-
525 seven $\frac{87}{100}$ [15] dollars, value received, with eight per cent. per annum interest from date untill paid; and the said Rochford, Brown & Co., to whom or whose order payment of said amount of said promissory note was made afterwards, and before payment of said promissory note, to wit, the day and year aforesaid, did indorse said promissory note in writing and deliver the same to said plaintiff, by means whereof said defendants became liable to pay the amount of said promissory note to said plaintiff, and being so liable, in consideration then and there undertook and promised to pay the same to said plaintiff when they should be thereunto afterwards requested, a copy of which said note is herewith filed, marked "Exhibit A." Plaintiff avers that although often requested said defendants have wholly failed and refused to pay the amount of said promissory note, or any part thereof, to the damage of said plaintiff ten thousand dollars, & he therefore sues.

WILKINSON & BOWMAN.

526 [16] (Copy.)

EXHIBIT A.

$5,397.87.] NEW ORLEANS, *December 18th*, 1861.

Twelve months after date I promise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, fifty-three hundred & ninety-seven $\frac{87}{100}$ dollars, value received, with eight per cent. per annum interest after maturity untill paid.

Authorized by—

(Sig.) SARAH D. PARTEE.

M.] W. B. PARTEE.

Summons.

The State of Mississippi to the sheriff of Yazoo County, greeting:

You are hereby commanded to summon Sarah D. Partee and William B. Partee, if to be found in your county, so that they appear before the circuit court, to be held at the court-house in Yazoo City in and for the county aforesaid, on the fourth Monday of May next, to answer a complaint filed in our said court by James Stewart, and have there and then this writ.

Issued the 28th day of April, 1866.

[SEAL.] GEO. A. GIBBS, *C'k.*

527 [17] *Sheriff's return.*

Executed May 10th, 1866, by delivering a copy of the within writ to the within-named parties.

S. M. DYER, *Sh'ff*,
By CHAS. C. DYER, *D. S.*

Judgement, June 6th, 1866.

JAMES STEWART
vs.
SARAH D. PARTEE AND WILLIAM B. PARTEE.

This day came the plaintiff, by attorney, and the defendant being called to answer plaintiff's complaint came not, but made default, whereupon it is considered by the court that plaintiff recover of defendants the sum of ($6,894.86) six thousand eight hundred & ninety-four dollars and eighty-six cents, the amount of plaintiff's complaint mentioned, and also his costs in this behalf expended.

Release of errors.

Judgement in circuit court of Yazoo County, May term, 1866.

JAMES STEWART
vs.
W. B. & S. D. PARTEE.

We hereby release all errors in the stated case.

528 [18] Witness our hands & seals this 12th day of April, 1867.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE. [SEAL.]

Attest: C. F. CALHOUN.

Petition for writ of error.

To George A. Gibbs, clerk of the circuit court of Yazoo County, State of Mississippi:

Petition of William B. Partee and Sarah D. Partee respectfully represents that on the 6th day of June, A. D. 1866, James Stewart obtained a judgement in the circuit court of Yazoo County against your petitioners for the sum of six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars, together with the cost of suit; that said judgement was obtained on a contract made prior to the first day of June, 1865.

That your petitioners, feeling themselves ag'rieved by the judgement and recovery aforesaid, desire to have the same reviewed by the high court of errors and appeals of the State of Mississippi, and for that purpose pray for a writ of error with a supersedeas returnable to the next June
529 term of said high court [19] of errors and appeals of the State of Mississippi, to be held at Macon, and herewith tender their bond with sufficient securities, as required by law.

Feb'y, 1868.

(S'g.) SARAH D. PARTEE.
W. B. PARTEE.

Appeal bond.

Know all men by these presents that we, William B. Partee and Sarah D. Partee, principals, and James D. Partee, and William Parker, sureties, are held and firmly bound unto James Stewart in the sum of two hundred dollars, for the payment of which well and truly to be made we bind ourselves, our heirs and executors, administrators and assigns, firmly by these presents. Sealed with our seals and dated this 18th day of February, 1868.

The condition of the above obligation is such that whereas in the circuit court of Yazoo County, State of Mississippi, on the 6th day of June, A. D. 1866, the above-named James Stewart recovered a judgment against the above-named William B. Partee and Sarah D. Partee for the sum
530 of six thousand eight hundred and [20] ninety-four $\frac{86}{100}$ dollars, together with costs of suit; and William B. Partee and Sarah D. Partee, feeling themselves aggrieved by the judgement aforesaid, and desiring to have the same reviewed by the high court of errors and appeals have applied to the of the circuit court of Yazoo County for a writ of error, with supersedeas, removing said cause to the high court of errors and appeals to be held at Macon on the first Monday of June next, which has been granted them on the execution of this bond:

Now if said William B. and Sarah D. Partee shall prosecute with effect the said writ of error, or in case they fail therein, shall well and truly pay all costs that may be awarded against them, then this obligation to become void; otherwise to remain in full force and virtue.

SARAH D. PARTEE. [SEAL.]
W. B. PARTEE. [SEAL.]
J. D. PARTEE. [SEAL.]
W. PARTEE. [SEAL.]

531 [21] Petition & bond filed Feb'y 19, 1868. G. A. Gibbs, cl'k, by E. Dreaning, d. c.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, George A. Gibbs, circuit court clerk, certify that the foregoing is a true and perfect transcript of the record in the within-stated case, as appears on file in my office.

This 30th day of March, 1868.

[SEAL.] G. A. GIBBS, *Cl'k.*

The State of Mississippi to George A. Gibbs, clerk of the circuit court of Yazoo County, greeting:

Whereas in the record and proceedings, and also in the condition of the judgement in the circuit court of Yazoo County, on the 6th day of June, A. D. 1866, in a certain action in said court, wherein James Stewart is plaintiff and W. B. Partee and S. D. Partee are defendants, for the sum of six thousand eight hundred & ninety-four dollars and 86
532 cents, and also costs [22] of suit against the said W. B. and S. D. Partee, manifest error has happened, to the great damage of the said W. B. & S. D. Partee, as by their complaint or petition we have understood: And we being willing that the error, if any has *and*, should be

duly corrected, and full and speedy justice done to the said W. B. & S. D. Partee in this behalf, command you that the record and proceedings aforesaid, with all things touching the same, you, under your hand and seal of office, distinctly and plainly send to the judges of our high court of errors and appeals, at the city of Macon, on or before the first day of the next term of our said court, to be held as aforesaid on the first Monday of June next, so that our said judges, the record and proceedings aforesaid being inspected, may further cause to be done therein what of right and according to law ought to be done, and have then and there this writ.

Witness the hon. , presiding judge of the high court of errors and appeals, the 1st Monday of February, A. D. 1868, and seal of the said court of Yazoo County and

533 Issued by the clerk thereof the 30th [23] day of March, A. D. 1868.

[SEAL.] GEO A GIBBS, *Clerk.*

THE STATE OF MISSISSIPPI,
Hinds County, ss:

I, Alonzo W. Little, clerk of the supreme court of Miss., do hereby certify that the above (9) nine pages contain a full, true, and perfect copy of record in suit No. 11358, of W. B. & Sarah D. Partee against James Stewart, on writ of error to the high court of errors and appeals from the circuit court of Yazoo County, and filed in said court April 1st, 1868, as appears from the original run of record in my office.

Given under my hand & seal of office at Jackson, this 5th October, A. D. 1877.

[SEAL.] A. W. LITTLE, *Clerk.*

High court of errors and appeals, Miss., June term, A. D. 1868, 1st district, No. 11358.

W. B. PARTEE AND SARAH D. PARTEE *vs.* JAMES STEWART. } Error to the circuit court Yazoo County.

Record, pet., bond, and writ of error filed April 1, 1868, cit. ex'd
534 April 1st, 1868, filed May 22d, 1868; plea filed by Wil [24] kinson & Bowman, filed July 13th, 1868; release of errors filed July 13th, 1868, alias writ of error iss. & filed Oct. 1st, 1868. Citation issued Oct. 1st, 1868; ret'd ex'd & filed Oct. 10, '68.

Affirmed, L. 552.

Mandate to Yazoo Nov. 21, '68.

The above is a true copy from general docket G of the proceedings had & done, &c., in the above-styled suit.

In the high court of errors & appeals, June term, 1868.

W. B. PARTEE ET AL., APPELLEE,
vs.
JAS. STEWART, APPELLANT.

And the said appellant, James Stewart, by his attorneys, comes and defends the wrong and error, &c.; and to writ of error in this case says, before the suing out of said writ of error, to wit, on the 12th day of April, 1867, at, to wit, the county of Yazoo, State of Mississippi, by their certain instrument of writing, under their seal, the said appellees, W. B. Partee and Sarah D. Partee, did then and there release all errors (if any such
535 exist) in the above-stated case, and this the said appellant is [25] ready to verify. Wherefore he prays judgement, &c., and that said writ of error be quashed.

WILKINSON & BOWMAN,
For Appellees.

JAMES STEWART
vs.
W. B. AND SARAH D. PARTEE.

Judgement in circuit court Yazoo County, May term, 1866.

We hereby release all errors in the above-stated cause.
Witness our hands & seals this 12th day of April, 1867.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE. [SEAL.]

Attest: C. V. CALHOUN.

STATE OF MISSISSIPPI,
County of Yazoo:

I, George A. Gibbs, clerk of the circuit court of said county, certify the above to be a true copy of the release of errors in the above stated . Filed in my office April 15, 1867, as the same now appears on file . Given under my hand and official seal, at Yazoo City, March 30, 1868.

[SEAL.]

G. A. GIBBS, *Clerk,*
By E. DRENNING, *D. C.*

536 [26] The State of Mississippi to the clerk of the circuit court of Yazoo County, greeting:

Because in the process, proceedings, and judgement in and before our circuit court of said county between James Stewart, plaintiff, and W. B. & S. D. Partee, defendants, in which, on the 6th day of June, A. D. 1866, the said James Stewart recovered judgement for $6,894.86 & costs against the said W. B. Partee and S. D. Partee; and whereas manifest error in law has intervened, to the damage of the said parties, as by their petition we are informed, and we being willing that the error, if any there be, may be corrected, and full and speedy justice done therein, do command you to send under your signature and the seal of your court, openly and distinctly,

a complete and perfect transcript of all of the said process, proceedings, and decree as the same remains of record in said court, with this writ, so that the same be before our supreme court, to be held at the capitol, in the city of Jackson, on or before the 3d Monday of October, A.
537 D. 1868, next, so that [27] our said supreme court may cause to be done for correction of the error what of right and according to law ought to be done.

Witness the honorable Thomas Shackelford, chief justice of our said high court, the 3d Monday of April, A. D. 1868.

Witness also, Samuel Livingston, clerk of our said supreme court, and the seal of said court affixed the 1st day of October, A. D. 1868.

[SEAL.] SAMUEL LIVINGSTON, *Clerk.*

October term, 1868. Monday, Nov. 9, 1869.

W. B. PARTEE AND SARAH D. PARTEE
vs. 11358.
JAMES STEWART.

This cause having been submitted on this day of this term upon the record herein, from the circuit court of Yazoo County, and this court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order and adjudge that the judgement of said court rendered at the May term, 1866, on the 6th day of
538 June, 1866, be, and [28] the same hereby, affirmed; and it is further considered and so ordered and adjudged by this court that the defendant in error do have and recover of the plaintiff in error, and J. D. Partee and W. Partee, sureties in the writ of error bond, the costs in this suit expended, &c., to be taxed, &c.

(No signatures or certificates.)

Filed Oct. 16th, 1877. G. M. Powell, cl'k, by N. T. Pugh, d. c.

539 [29] *Deposition of R. Bowman.*

Chancery court. Oct. term, A. D. 1879, Yazoo County.

SARAH D. PARTEE ET AL.
vs. Ch'y, 987.
E. DRENNING, EX'C'R, ET AL.

Interrogatories to be propounded to Rob't Bowman, of Yazoo County, witness for defendants.

1st. Are you acquainted with the parties to this suit?

2nd. What is your business, and what was your connection with a certain suit in the circuit court of Yazoo County, in which James Stewart recovered judgement against Sarah D. Partee and Wm. B. Partee for $6,894.86 June 6th, 1866?

3rd. Was any release of errors in said suit given by the defendants therein; and, if so, under what circumstances and for what consideration?

4th. Did said Sarah D. Partee have a separate estate in December, 1861, and previously?

5th. Did Sarah D. Partee have a separate estate when said release of errors *of* given; and, if so, was the same to be affected by the execution of said judgement?

6th. Where did Wm. B. and Sarah D. Partee reside in De-
540 cember, 1861, and where [30] was the said Wm. B. Partee then engaged in business; with whom and where?

E. DRENNING, *For Def'ts.*

7th. Was any time of forbearance given in consideration of said release of errors; and, if so, how long?

E. DRENNING, *For Def'ts.*

The answer of Robert Bowman to interrogatories propounded to him in the cause stated of W. B. Partee vs. E. Drenning, ex'd, &c.

Ans. 1st. I am.

Ans. 2d. Attorney at law. Myself and late partner, George B. Wilkinson, deceased, brought and prosecuted the suit mentioned in this interrogatory to judgement in the circuit court of Yazoo County; I attended to the case, as I now remember, for our then firm.

Ans. 3d. My recollection is distinct that there was a release of errors, and it was in writing. I can only state from memory, not having the release before me, that there was no consideration expressed therein; the real consideration, however, was that the defendant, W. B. Partee, the
541 husband of Mrs. Sarah D. Partee, [31] stated to me that they wanted time on the judgement, and under the laws then existing they were entitled to a writ of error from said judgement to operate as a supercedeas to the high court of errors and appeals, with bond only for costs. Beside this the judgement was based on a note made by Mrs. Sarah D. Partee, approved by W. B. Partee, and dated in New Orleans, Louisiana, and I had some apprehension that the case might be reversed, and I advised the extension of time by Mr. Stewart if Mr. and Mrs. Partee would sign the release of errors.

Ans. to 4th int. I think she did, and as well as I can know what any one possesses she owned large property, both real and personal, in Yazoo County, Mississippi.

Ans. to 5th int. I refer to my answer above, and say that as far as I could gather from the records of this county she still owned the same realty, consisting of large tracts of land, a considerable portion of which was considered as valuable. My opinion was then, and now is, her lands were liable to said judgement and the same were sold for said judgement.

This, however, I will state, that all this answer is simply my
542 [32] judgment and opinion, derived from the records.

Ans. to 6th int. I cannot state where he resided in December, 1861; I only know with certainty that he and family in 1860 resided in New Orleans, Louisiana, and that he was then, as he informed me, engaged in business with Rocheford, Brown & Co., of that city.

ROBERT BOWMAN.

Answer to 7th. Time was given; the release of errors was in the spring, and I now recollect the execution by agreement was to be held up

until the following winter to enable them to gather their crops, and it was held up until, and I think after, the time agreed on.

ROBERT BOWMAN.

It is agreed that the above deposition may be read as evidence on trial of the said cause, subject to relevancy & competency.

October 16th, 1877.

J. C. PREWETT, *For Complainants.*
E. DRENNING, *For Def'ts.*

(No filing.)

543 [33] *Agreement of counsel.*

SARAH D. PARTEE ET AL. vs. EDW'D DRENNING, EX'R, &C. } 987.

It is agreed that said Sarah D. Partee was a married woman, the wife of W. B. Partee, on the first day of December, 1861, and has ever since been, & was at the time of filing the bill in this case a married woman, the wife of said William B. Partee. That said Sarah D. Partee was the wife of said W. B. Partee at the time the note on which the judgement of the circuit court in favor of James Stewart against said W. B. & Sarah D. Partee was rendered.

J. C. PREWITT, *For Compl'ts.*
E. DRENNING, *For Def'ts.*

Filed Oct. 22d, 1877. Geo. M. Powell, cl'k.

Final decree.

SARAH D. PARTEE ET AL. vs. E. DRENNING, EXE'D, ET AL. } 987.

This day this cause coming on to be finally heard on the complainants' bill, answer, and the exhibits and proofs, and the parties herein
544 consenting, it is by the court ordered, adjudged, [34] and decreed that the said sheriff's deed to the said James Stewart, deceased, to the said lands in said bill mentioned, be, and the same is hereby, satisfied and confirmed as good and valid, and that the conveyances to said McCall & Crouch be, and the same are hereby, adjudged good and valid, and that the said judgement of James Stewart against Sarah D. Partee and William B. Partee was founded on a contract for the benefit of the separate estate of said Sarah D. Partee, and hereby held to be valid and binding.

Signed this Oct. 22d, 1877.

E. G. PEYTON, *Chancellor.*

Filed Oct. 22d, 1877. G. M. Powell, cl'k, by A. F. Pugh, d. c.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, Geo. M. Powell, clerk of the chancery court, in and for the county and State aforesaid, do hereby certify that the foregoing 33 pages contain a true and complete copy and transcript of all the papers, pleadings, and proceedings in the above and foregoing stated cause in said court as fully and completely as the same appear and remain on file and of record in our said court.

545 Given under my hand and the seal of said court at office in Yazoo City, county and State aforesaid, this 13th day of September, A. D. 1879.

[L. S.] GEO. M. POWELL, *Clerk.*

And on the 10th day of November, A. D. 1879, the complainants filed their exceptions to the answer of Hudson & Ewing, in the words & figures following, to wit:

546 In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK ET AL. *vs.* W. B. PARTEE ET ALS. } 185, N. 5.

And now come the complainants, by solicitor, and say that the answers filed herein by Hudson & Ewing, present no good & sufficient defense to complainants' bill and supplemental bill, and tender impertinent and irrelevant issue, & wherefore complainants do except to the said answer for impertenency, irrelevancy, and insufficiency, in this, to wit:

That the said answer, on lines 21 to 27, inclusive, page one, and on pages two, three, four, five, six, and seven, and on the first twenty lines page eight, and eighteen lines page nine, and on pages sixteen & seventeen, and on the first eight lines page eighteen, and on the first twenty-two lines of page twenty-one, and on pages twenty-six, twenty-

547 seven, twenty-eight, twenty-nine, and thirty, contains statements, matters, and things not proper or pertinent to the case as made against them, and wholly insufficient and irrelevant to the issues tendered to them, &c.

Wherefore these complainants do except to the said answer for impertenency, insufficiency, and irrelevancy, and pray that the said several matters herein indicated, but not specially set out, to avoid prolixity may be expunged from the said answer, &c.

W. L. NUGENT, *P. Q.*

And on the 10th day of November, 1879, the complainants filed their exceptions to the answer of E. Dremning, in the words and figures following, to wit:

548 In circuit court United States for southern district of Mississippi.
In equity.

CANAL BANK ET ALS.
vs. } 185.
W. B. PARTEE ET ALS.

And now come the complainants, by solicitors, and say that the answers filed herein by E. Dremming, executor of James Stewart, present no good or sufficient defense to the complainants' bill and supplemental bill, and tende'd impertenent & irrelevant issues, wherefore complainants do except to the said answer for insufficiency.

1st. The said answer, on pages 5 & 6 & 7, states as follows: "* * * but respondent denies that it anywhere appears that the debts intended to be secured thereby were such debts as a married woman could contract and for which her separate estate would be liable, and respondent
549 is informed and so states that said debts were not contracted for the benefit of the separate estate of said Sarah E. Partee. Respondent is advised that said deed in trust is fraudulent and void, because the same assumes to pay off one-half of the liabilities of said Sarah D. Partee with wild lands in Sunflower and Tallahatchie Counties, Mississippi, at the price and value of ten dollars per acre, when in fact at that time the said lands were not worth one dollar per acre, and said conveyance in trust made it encumbent upon said creditors to accept said lands at that fictitious and exaggerated value, being more than ten times their actual value. Respondent further states that at the time of the execution of said conveyance in trust in November, 1866, the said Sarah D. Partee did not own the lands described in said conveyance as lying in Sunflower and Tallahatchie Counties, but that the same had been forfeited and
550 sold for delinquent taxes, and *even* held and owned by the State of Mississippi, as appears by reference to the special report of the auditor of public accounts, published A. D. 1871. Respondent further says that Sarah D. and Wm. B. Partee, in said deed in trust, *rescend* to themselves the benefit of a large extenfion of time in the payment of their debts, from one to five years, thus averaging two and one-half years, being a much longer time than was necessary by the usual course of legal proceedings to enforce the payment of said debts, and that for this, if for no other reason, said deed in trust is fraudulent and void."

2. The said answer at the bottom of page 7 and on page 8, states as follows: "* * * and states further, in respect to said judgment, that in consideration of an extenfion of time the said Sarah D. and Wm.
551 B. Partee gave a release of errors therein, & that afterwards on a writ of error the said suit was reversed by the high court of errors & appeals, and this release of error being pleaded the said judgment of the court below was duly affirmed; and states further that the validity of said Stewart judgment has been litigated in the chancery court of Yazoo County between the proper parties, and a decree therein rendered confirming said judgment, and stating that the debt which was the foundation of the same was contracted for family & plantation supplies for the use of the separate estate of the said Sarah D. Partee, all of which will more fully appear by reference to a copy of said proceedings filed herewith, made a part of this answer, and marked 'Exhibit No. 1' thereto.

3. The said answer on page 9, beginning with line 10 and ending with line 23, states as follows: "* * * but says at that time James
552 Stewart has long been dead, and respondent says the interests of his estate are wholly unaffected by said judgment. Allusion having been made to the fact that the answer of James Stewart to complainants' bill is not signed, or not sworn to by him. Respondent answers that James Stewart was then in Europe, and there was not time to transmit the said answer, and to have the same returned."

4. The said answer on page 12, lines 4, 5, 6, & 7, states as follows: "Respondent is informed that said McCall & Crouch have made expensive improvements on said 'Lake Dick' plantation."

Whereupon these complainants do except to the said answer of the said Drenning for insufficiency, impertenency, and irrelevancy in the several matters specially mentioned, and pray that the said several matters be expunged from the said answer, &c.

W. L. NUGENT, *S'r.*

553 And on the 10th day of November, 1879, the following interlocutory decree was made and entered of record in said cause, to wit:

554 CANAL BANK ET ALS. *vs.* WILLIAM B. PARTEE ET AL. } 185. Equity.

Process of subpœna herein having been duly executed upon J. Schlanker, H. Spigot, Isaac Brown, and O. H. McCall, and they having failed to appear and plead, answer, or demur to the complainants' bill of revivor & supplement, it is, on motion of complainants' solicitors, ordered, adjudged, and decreed that the several allegations of said bill be taken for confessed as to them. And it further appearing that the defendants Y. Hain, R. Breene, are not within the jurisdiction of this court, on like motion this suit is discontinued as to them.

And on 20th day of November, 1879, the following decree on the exceptions of complainants to the answers of Hudson & Eweing and of E. Drenning was made and entered of record, to wit:

555 In the circuit court of the United States for the southern district of Mississippi. In equity.

THE CANAL BANK AND OTHERS *vs.* WILLIAM B. PARTEE ET ALS. } 185.

This cause came on this day to be heard the exceptions taken by complainants to the answers filed by Hudson & Ewing & E. Drenning, executor of the last will and testament of James Stewart, deceased, as to which it was in open court agreed by and between the solicitors that the same should be argued and decided without regard to the form in which the said exceptions were presented, and as if the same were in the form prescribed by the course of chancery practice, to save time and prolixity of

pleadings; and the court, having considered and examined the said exceptions, is of opinion & doth order, adjudge, and decree as follows:

1st. That all and singular the exceptions to the answer of the
556 said E. Drenning, executor of the last will and testament of James Stewart, deceased, and numbered respectively one, two, three, and four, be, and the same are hereby, sustained, and that the said answer be, and the same is hereby, referred to the clerk and master of this court, who will expunge from the same all parts thereof to which said exceptions were taken and sustained.

2nd. That Hudson & Ewing, claiming title to a portion of the property in controversy under a trust-deed executed by Thomas A. Nelson, one of the defendants to the original bill in this cause, on the 15th day of April, 1873, prior to any process, publication, or appearance in this cause by said Nelson, are not estopped as to said property by the les pendons, or the proceedings heretofore had in the cause, from answering the original bill, but, on the contrary, that they are proper parties defendant to the
557 said original bill, as having a substantial interest in the original controversy.

3. That the said Hudson & Ewing be, and they are, made parties to said original bill; that the exceptions taken to all parts of the answer of said Hudson & Ewing to the supplemental bill which relate to and answer the original bill in this cause, be, and the same are hereby, overruled in so far as the lands purchased under the said trust-deed executed by said Nelson are concerned, and that the same stand and be considered in the further progress of this cause in so far as said last named lands are concerned as the answer of said Hudson & Ewing to the said original bill.

4. That Thomas A. Nelson, grantor in the trust-deed under which Hudson & Ewing claim, having answered the said original bill, and defended the suit, all proof heretofore taken in the cause by the com-
558 plainants shall be competent evidence against the said Hudson & Ewing and may be read in any further proceeding taken in the cause and at the hearing, subject to any valid exceptions otherwise which may be taken thereto by them; but the said Hudson & Ewing may cross-examine any of the witnesses heretofore examined by complainants, upon serving complainants solicitors, for a reasonable time, with interrogatories framed for that purpose, if they should so desire; and may take proof generally on all the matters of said original bill.

5. That as to the lot of ground purchased by the defendant R. G. Hudson, from Oscar H. McCall & Etta McCall, on the 4th day of December, 1878, being part of "Lake Dick" plantation, in Yazoo County, Mississippi, and described as follows, to wit: one acre of ground on lot one, section five, township nine, range four west, bounded as follows: Beginning
559 at a stake on east bank of the Yazoo River and running back S. 63 W. two chains eighty-five links to a stake; thence N. 27° W., three chains thirty-three links to a stake; thence N. 63° E., to the Yazoo River; thence up said river to the place of beginning; the said Hudson is estopped and concluded by the pendency of this suit, and the proceedings heretofore had therein, and in so far as the answer of said Hudson & Ewing relates to the said acre of ground, and undertakes to litigate complainants' right and

title thereto, but may show cause for allowance of encumbrance thereon, the exceptions taken by complainants to their answer are sustained.

6. Ordered, adjudged, and decreed this 20th day of November, A. D. 1879.

R. A. HILL, *Judge, &c.*

560 And on the 20th day of November, A. D. 1879, the following order permitting Hudson & Ewing to reform their answer was made in said cause and entered of record in the words & figures following, to wit:

CANAL BANK ET AL.)
v.)
W. B. PARTEE ET AL)

On application of the defendants, Hudson & Ewing, it is now ordered by the court that said defendants be allowed thirty days within which to reform their answer, so as to perfect the same as a defense to the original bill, and also to perfect the same in the matters of fact touching their tax-title as they may be advised, the reformed answer to be taken as if filed at the present term of the court, and the replication thereto to be taken as if filed at the present term.

Ordered, adjudged, and decreed this the 20th day of November, 1879.

R. A. HILL, *Judge.*

561 And on the 24th day of November, 1879, the following order was made and entered of record, to wit:

562 CANAL BANK AND OTHERS)
vs.) 185.
W. B. PARTEE ET ALS.)

On motion of complainants' solicitors it is ordered that the papers in this cause be, and the same are hereby, referred to James M. McKee, clerk, to state an account of the amount due to the complainants in this cause, and to report forthwith.

R. A. HILL, *Judge.*

And on the 24th day of November, 1879, a decree was made and entered of record by said court separating said cause, which is in the words and figures following, to wit:

563 CANAL BANK & OTHERS)
vs.) 185.
W. B. PARTEE AND OTHERS.)

On motion of complainants' solicitors it is ordered, adjudged, and decreed that the original bill and proceedings had in this cause stand and be revived against the defendants E. Drenning, as executor of the last will and testament of James Stewart, deceased, and be in the same plight and condition as the same were in at the abatement thereof by the death of the

said Stewart, as well against the said Drenning, executor, &c., as against the defendant O. H. McCall, the purchase under said Stewart pendente lite of part of the lands in controversy, and J. Schlenker, H. Spigert, and Isaac Brown, and others, purchasers under said McCall, and be further proceeded in against said defendants as if the said Stewart had not departed this life, and the said O. H. McCall and James S. Crouch
564 had not purchased said lands from him as alleged in the bill of revivor and supplement. And in order that the controversy as to the defendants, Robert G. Hudson and Charles C. Ewing, and E. Drenning, as administrator of Christopher Todd, deceased, may be formally & separately adjudicated and determined, in respect to the lands included in the "No Mistake" and "Tyrone" plantations, claimed by said Hudson & Ewing, and the questions arising between the said parties & complainants touching said Todd legacy, and the several matters presented in the original bill and in their answers heretofore filed, disembarrassed by the other matters herein involved as between complainants and the said other defendants in the cause, and be proceeded in regularly, according to the course of equity practice. It is further ordered, adjudged, and decreed that the said bill of supplement & revivor heretofore filed by complainants, and their
565 said original bill & supplemental bill as to said Hudson & Ewing and the said E. Drenning, adm'r, &c., be proceeded with hereafter accordingly, and against said defendants separately.

And it is further ordered, adjudged, and decreed that this cause as to all the defendants therein, except the said Hudson & Ewing and Drenning, adm'r, be set for hearing on the original bill and exhibits, the bill of revivor & supplement, and answers thereto of E. Drenning, executor of James Stewart, dec'd, and the exhibits to said bills & answers, the pro confesso, proofs & proceedings heretofore had there'n, as well in this court as in the Supreme Court of the United States. But no decree made in this cause so separated as aforesaid nor account taken therein shall in any manner prejudice the rights and equities of the said Hudson & Ewing
566 or the said E. Drenning, adm'r of said Todd, touching the lands included in the "No Mistake" and "Tyrone" plantations, or the rights and equities of complainants against them, and said plantations under the trust-deed exhibited with the bill, as the same may be hereafter thereon established, which are reserved for adjudication as fully as to all the matters of said original and supplemental bill, and the answers of Ewing & Hudson, as if this decree had not been rendered, and the exhibits, proofs already taken, and such as may be taken by the parties hereafter, proceedings had, exhibits, &c.

But no decree or order herein made affecting the said administrator of Stewart, or the purchasers mediately or immediately from him, nor any account taken of the indebtedness of Sarah D. Partee and W. B. Partee, or either of them, shall affect the right of Hudson & Ewing
567 to show or insist on any proofs which are in, or that may be made hereafter, that any note or notes embraced in said deed of trust of complainants, is not and was not binding on the said Mrs. Sarah D. Partee or the property in question, or preclude them from insisting that any sums of money arising from the sale of the property purchased by said Stewart as aforesaid, and appropriated to any note or notes aforesaid not binding on the said Sarah D. Partee or the property aforesaid, shall be credited to those notes or claims which shall appear to be binding on the

said Sarah D. Partee and the property aforesaid, as far as the said Hudson & Ewing may be affected thereby.

Ordered, adjudged, and decreed this 24th November, A. D. 1879.

R. A. HILL, *Judge.*

568 And on the 24th day of November, 1879, the following report of the special commissioner was filed in said cause, in the words and figures following, to wit:

569 In the circuit court of the United States for the southern district of Mississippi.

THE CANAL BANK OF LOUISIANA ET AL. *vs.* WM. B. PARTEE ET AL. } No. 185. Equity.

The undersigned commissioner appointed by your honorable court to compute the interest and state the amounts due upon the several promissory notes filed with the bill of complaint in the above-styled cause, would respectfully report that he has performed the duties enjoined upon him, and finds the amount of principal and interest due upon said notes on this day to be as follows:

Principal of five notes payable to order of J. Maush Denman	$4,500 00	
Interest to date, 8 p'r ct	4,682 00	
		$9,182 00
Principal of five notes payable to order of Canal Bank	5,000 00	
Interest to date at 8 p'r ct	5,202 22	
		10,202 22
Principal of five notes payable to order of E. Dupassin & Co	3,600 00	
Interest to date at 8 p'r ct	3,745 60	
		7,345 60
Amount carried over		26,729 82
570 Amount bro't over		26,729 82
Principal of five notes payable to order Union Bank of Louisiana	$2,207 50	
Interest to date, 8 p'r ct	2,296 78	
		$4,504 28
Principal of five notes pa'ble to order Louisiana State Bank	$2,115 00	
Int. to date, 8 p'r ct	2,200 09	
		4,315 09
Principal of five notes payable to order Crescent Bank	$2,000 00	
Int. to date, 8 p'r ct	2,080 89	
		4,080 89
Total principal & interest		$39,630 08

Respectfully submitted this 21st Nov'r, 1879.

JAS. M. McKEE,
U. S. Commissioner.

And on the 16th December, 1880, the following replication was filed in said cause, to wit:

CANAL BANK & OTHERS
vs. } 185.
W. B. PARTEE AND OTHERS.

The replication of complainants to the answer of Robert G. Hudson & Chas. C. Ewing, filed herein, Oct. 14, 1879.

These respondents, saving & reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer for replication thereunto, say that they can and will prove their said
570½ bills to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bills they have already prayed.

W. L. NUGENT,
A. M. HARLOW,
For Complainants.

And on the 6th day of February, A. D. 1880, the following order was made in said cause, and entered of record in the words and figures following, to wit:

571 CANAL BANK ET ALS.
vs. } 185. N. S. Equity.
W. B. PARTEE.

By consent of parties it is ordered, adjudged, and decreed that Robert G. Hudson and C. C. Ewing enter into bond, in the penalty of three thousand dollars, with one or more good securities, to be approved by some United States commissioner at Yazoo City, payable to the United States and conditioned that they will well and truly account for the rent of the "No Mistake" and "Tyrone" plantations in Yazoo County, and now in controversy herein, for the current year, and pay over the same according to the orders of this court hereafter to be made in this cause. And it is further ordered, adjudged, and decreed that unless the said Hudson & Ewing execute and file said bond in this cause within thirty days from this date, the receiver & trustee hereof appointed in this cause shall take pos-
572 session of said plantation and lease the same for the current year, and collect and account for rents, &c.

Ordered, adjudged, and decreed this 6th day of February, A. D. 1880.

R. A. HILL, *Judge, &c.*

And on the 30 day of March, 1880, the following bond was filed in said cause by defendants, Hudson & Ewing, to wit:

13318——18

573 Know all men by these presents, that we R. G. Hudson, and C C. Ewing, principals, and R. S. Hudson singularly, all of Yazoo County, except said Ewing, who is of Monroe County, Mississippi, are held and firmly bound unto the Canal and Banking Company for the use of said company and the other complainants in the equity cause of the Canal & Banking Co. et al. vs. Partee et al. pending in the U. S. cir. ct. for the south. district of Mississippi, in equity, in the penal sum of three thousand dollars for the payment of which well and truly to be made we bind ourselves, jointly and severally, by these presents. Signed by us and sealed with our seals this the 17th day of March, 1880.

The condition of this bond is such that whereas in said equity cause above-named said court made a second order or decree, directing said Hudson & Ewing to remain in possession of the lands described in said
574 decree as the "No Mistake" plantation and "Tyrone" plantation, on condition that they would give bond and security to account for the fair rental value of said property in the event said court should decide, on the final hearing of said cause, that they should account for said rent (said decree being now referred to). Now, if said R. G. Hudson and C. C. Ewing shall account for the rental value of said property herein described for the year 1880, in the event it may be so decided by the court, said rental value to be the fair, usual, and customary rental value of said property, to be ascertained by the court, then this obligation is to be void; otherwise to remain in full force and effect.

In testimony whereof said parties have hereunto set their hands and affixed their seals this the 17th day of March, 1880.

R. H. HUDSON. [SEAL.]
C. C. EWING. [SEAL.]
ROBERT S. HUDSON. [SEAL.]

575 UNITED STATES OF AMERICA,
Southern District of Mississippi:

At Yazoo City personally appeared before me the above-named Robert S. Hudson, who, being first duly sworn, says on oath that he owns property in the State of Mississippi to the full value of $3,000.00, subject to execution, over and above all his legal liabilities and exemptions.

ROBT S. HUDSON.

Sworn to & subscribed before me this the 27th day of March, 1880.
[SEAL.] GEO. M. POWELL,
U. S. Commissioner.

I approve of the above bond.

GEO. M. POWELL,
U. S. Commissioner.

And on the 10th day of May, 1880, H. W. Connor & Son filed their petition herein in the words & figures following, to wit:

576 In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK AND OTHERS
vs. } 185. N. S.
W. B. PARTEE AND OTHERS.

To the honorable the judges of the circuit court of the United States for the 8th southern district.

The petition of H. W. Connor & Son, late of the city of New Orleans, in the State of Louisiana, respectfully represents that they are the holders and owners of five promissory notes for seven hundred dollars hereto attached, marked "1," "2," "3," "4," "5," which are secured by the deed of trust exhibited with complainants' bill in this cause; that said notes were handed to A. M. Harlow and W. L. Nugent, sol'r', under the agreement made with them by the surviving creditors, and have been in their possession ever since the hearing of this case by this court years ago;
577 that their said claim was not sooner presented to the court because of the appeal in the case to the Supreme Court of the United States; that they have paid their pro rata share of the costs & expenses heretofore incurred in the cause, and have become bound by the creditors' agreement with counsel, and are bound by all the proceedings heretofore had.

They therefore pray to be allowed formally to become parties to the bill, and be entitled to all the benefits of the litigation heretofore secured to creditors, &c.

H. W. CONNOR & SON,
By W. L. NUGENT, *Sol'r.*

The notes attached to said petition are in the words & figures following, to wit:

578 $700.] YAZOO CO., MISS., *November 19th*, 1866.

On the first day of January, 1868, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, seven hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

$700.] YAZOO CO., MISS., *Nov. 19th*, 1866.

On the first of January, 1869, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, seven hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

$700.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of
579 , at the Citizens' Bank of Louisiana, New Orleans, seven

hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

$700.] YAZOO CO., MISS., *November 19th*, 1866.

On the first of January, 1871, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, seven hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

$700.] YAZOO CO., MISS., *November 19th*, 1866.

On the first of January, 1870, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, seven hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

580 Said notes are each endorsed as follows, to wit:

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $700 is secured by deed in trust, recorded in my office Nov. 19, 1866, to Connor & Son.

[SEAL.] M. A. JENKINS, *Clerk.*

And on said 10th day of May, 1880, the following order was made in said court, and entered of record as follows, to wit:

581 CANAL BANK AND OTHERS *vs.* W. B. PARTEE & OTHERS. } 185. N. S. Equity.

On reading & filing the petition of H. W. Connor & Son, and no objections being made thereto by complainants, it is ordered, adjudged, and decreed that they be made parties to the original & amended supplemental bills in this cause, and stand in like predicament with the complainant, as to all the proceedings heretofore had herein and all the fruits of the litigation so far received and secured and which may hereafter be secured in the cause. Ordered, adjudged, and decreed this 10th May, A. D. 1880.

R. A. HILL, *Judge.*

And on the 26th day of May, 1880, the following decretal orders were made and entered in said cause, to wit:

582 CANAL BANK AND OTHERS *vs.* W. B. PARTEE AND OTHERS. } 185. N. S. Equity.

Ordered, adjudged, and decreed that the commissioner heretofore ap-

pointed to state an account of rents, &c., in this cause, be, and they are hereby, allowed until the first day of July next to finish the taking of proof and make up and file their report, and that the parties have until the first day of August within which to file exceptions to said report.

CANAL BANK AND OTHERS *vs.* W. B. PARTEE AND OTHERS. } 185. N. S. Equity.

On motion of complainants' solicitors, it is ordered, adjudged, and decreed that all parties having and holding claims or notes secured by the trust-deed executed to and in favor of Robert Bowman, on the 19th day of November, A. D. 1866, by Sarah D. Partee, and conveying cer-
583 tain lands of said Sarah D. Partee, in Yazoo, Sunflower, and Tallahatchie counties, in this State, filed herein with the clerk of this court, stipulations in writing, making themselves parties, and agreeing & binding themselves to pay their proportion of the costs, charges, and expenses incurred in the prosecution of this cause, and the notes or claims held by them duly proven, but subject to exception by any party to the cause, on or before the first day of September next, or they will be forever barred of all participation in the profit and benefit accruing by reason of this suit. And it is further ordered, adjudged, and decreed that all notes or claims heretofore filed in this cause shall hereafter be taken as duly proven, and that the clerk of this court publish for four successive weeks a copy of this decretal order in the Weekly Clarion, a public newspaper of this State, printed and published in the city of Jackson, in this district.

584 Ordered, adjudged, and decreed this 26th day of May, A. D. 1880.

CANAL BANK & OTHERS *vs.* W. B. PARTEE AND OTHERS. } 185. N. S.

Ordered by the court that the parties to so much of the present proceeding as remains to be determined have until the first day of September next with' which to take proof, and that proof may be taken on all issues likely to arise in the cause, so as if possible to prepare the case for final hearing and determination at the next term of this court.

And on the 29th day of November, 1880, the following interlocutory decree was made by said court and entered of record in the words and figures following, to wit:

585 In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK AND OTHERS *vs.* W. B. PARTEE AND OTHERS. } 185. N. S. Original & supplemental bill.

Be it remembered that this cause, separated under the former order of

this court, came on this day to be heard upon the original & supplemental bills, and exhibits thereto, the answers of R. G. Hudson and Charles C. Ewing, William B. Partee, and E. Dreuning, administrator of Christopher Todd, deceased, and the exhibits thereto, the replications to said answers, the pro confesso entered against Joseph P. Benson and Sarah D. Partee, the orders and decrees heretofore entered in the cause, the mandate and opinion of the Supreme Court of the United States, and the depositions and proofs taken and filed in this cause, &c., &c. And the court, being thereof sufficiently advised, doth order, adjudge, and decree as follows:

586 1st. That the judgment recovered by James Stewart in the circuit court of Yazoo County, Mississippi, on the 6th day of June, A. D. 1866, for sixty-eight hundred and ninety-four $\frac{80}{100}$ dollars, against defendant Sarah D. Partee be, and the same is hereby, declared and adjudged to be null and void; and that the sale of the lands now in controversy by the sheriff of said county, under said judgment, on the 5th day of January, A. D. 1869, to James D. Partee, and the deed executed to him by said sheriff, the deeds of trust thereon by said James D. Partee to and in favor of Nelson, Lamphier & Co., executed to Fountain Barksdale, as trustee, on the 13th January, 1869, 24th February, 1870, 26th April, 1872, 10th August, 1871, and all of the deeds purporting to convey the same, executed by said James D. Partee be, and the same are hereby, declared and adjudged to be void and of no effect, and the same are hereby vacated, cancelled, and set aside.

587 2. That the deed from Fountain Barksdale, trustee, &c., to Thomas A. Nelson, dated June 15th, 1872, filed as Exhibit M, and conveying the lands now in dispute; the deed of trust thereon by said Thomas A. Nelson, executed on the 15th April, 1873, in favor of Nelson, Lamphier & Co. to Short, trustee; the proceedings had in the chancery court of Yazoo County by Benson & Ewing and others for foreclosure of said trust-deed, which was commenced August 1st, A. D. 1876; the final decree in said cause; the sale thereunder, and the deed executed under said sale to Benson, Hudson & Ewing by H. L. Taylor, commissioner, on Monday, Feb. 19th, 1877, be, and they are hereby, adjudged to be invalid and ineffectual to pass any title whatever to the said R. G. Hudson, J. P. Benson, and Charles C. Ewing, and the same are hereby vacated, set aside, and for nothing held.

588 3. That the tax deed executed by H. L. Taylor, sheriff and tax collector of Yazoo County, to and in favor of J. P. Benson and C. C. Ewing, on the 3d day of January, A. D. 1876, purporting to convey the lands now in controversy, filed as Exhibit K[2] to complainants' supplemental bill, be, and the same is hereby, adjudged to be void, and it is accordingly vacated, cancelled, and annulled.

4. That the deed executed by H. L. Taylor, sheriff and commissioner in the case of E. Dreaning, administrator of Christopher Todd, deceased, against William B. and Sarah D. Partee, to Robert G. Hudson and Charles C. Ewing, on the 15th day of April, A. D. 1878, conveying the lands now in controversy, marked "Exhibit R[2]" to complainants' supplemental bill, is only operative to convey the estate and interest therein of said Sarah D. Partee, subject to complainants' right of redemption as junior encumbrances; and that the said equity of redemption under complainants' trust-

589 deed of November 19th, 1866, exhibited with the original bill in this cause, still exists in full force, unaffected by any of the proceedings had in the said cause in this paragraph mentioned, and relied upon by defendants to cut off and bar the same.

5. That the defendants, Robert G. Hudson and Charles C. Ewing, the parties now in possession of the lands in controversy, and claiming the same, are entitled to be reimbursed the full amount paid by them, or either of them, to E. Drenning, administrator of Christopher Todd, deceased, in the purchase of the legacy decree, obtained by said Drenning against the said William B. and Sarah D. Partee in the chancery court of Yazoo County on the 8th day of June, A. D. 1868, with interest thereon at the rate of six per cent. per annum from the date of payment, and the sums paid by them for costs in said cause & interest, and that the sum
590 paid in the purchase of said decree is hereby fixed at ninety-three hundred and ninety-one $\frac{23}{100}$ dollars, and the date of payment, at February 5th, 1877; and that for this sum and interest thereon as aforesaid, and the sums paid for cost in said cause and interest thereon, the said defendants are entitled to and hold a paramount lien upon the lands now in controversy.

6. That the said Hudson & Ewing are entitled to be reimbursed the amounts paid out by them, for taxes upon the said lands here now in controversy, and the value of all improvements of a permanent character put upon said lands by them, and repairs, but are responsible for a reasonable sum annually for the use and occupation of said lands during their term of occupancy and up to January 1, 1881; and that for the balance, if any, which may be due to them upon the accounting hereafter to be taken, they shall have a lien upon the said lands superior to that of the
591 complainants; and that the balance, if any, due by them shall be deducted from the amount due them on account of the Todd legacy.

7. That the defendant, Sarah D. Partee, is indebted to the complainants in the sums set out in the original bill filed in this cause, upon contracts valid, legal, and binding upon her and her seperate estate, set out in the trust-deed of November 19th, 1866, heretofore referred to, and to the parties who have come in since the filing of said bill and been made parties complainant, and that the complainants are entitled to a foreclosure of said trust-deed and a sale of the lands included therein and not heretofore sold, subject to the prior claim therein in favor of said Hudson & Ewing as herein adjudged and designated, which may hereafter be taken in the cause.

8. That the trustee heretofore sub-stituted in place of Robert Bowman, having departed this life, N. H. Luse is hereby appointed and sub-
592 stituted in his place, and in place of said Robert Bowman as trustee in the deed of trust executed by William B. and Sarah D. Partee, on the 19th November, A. D. 1866, and marked "A" to complainants' original bill, and for the purpose of finally disposing of this controversy, and making sale thereof under the future order of this court, the title to this lands now in dispute, to wit: The south half of section nine; the south half northeast quarter and south half of the northwest quarter of section ten; the south half northwest quarter, and west half of the northeast quarter of section eleven; all section fourteen; the north half and east half of the southeast quarter of section fifteen; the north half and

the southeast quarter of section twenty-three, and the west half of section twenty-four, all in township nine of range four west, lying in Yazoo County, Mississippi, and constituting the "No Mistake" and "Tyrone" plantations, as well
593 that conveyed by said trust-deed of November 19th, 1866, as that acquired by said Benson, Hudson, and Ewing under the decree in the case of E. Dremming, adm'r of Todd, against William B. and Sarah D. Partee, and the deed to them executed by H. L. Taylor, sheriff & special commissioner in pursuance of a sale in said cause, is hereby fully vested in the said N. H. Luse, and devested out of the defendants and the former trustees in this cause under said trust-deed of November 19, 1866. And that the said N. H. Luse, substituted trustee, be, and he is hereby, directed and required, on or before the first day of January next, to lease the said lands and plantations to the highest bidder on a credit of ten months, after giving fifteen days notice of the time, place, and terms of letting, by posting notice thereof at three or more public places in said county of Yazoo, one of which shall be at the door of the court-house, and to take from the lessor bond
594 and good security for the rent agreed to be paid, requiring the sureties to justify as to their solvency and setting out in the bond that the statutory lien for the rent is not waived by the taking of the said bond.

9. That for the purpose of taking the account of rents, taxes, and improvements and the amount due said Hudson & Ewing the papers in this cause be, and they are hereby, referred to N. T. Pugh and S. W. Swayze, as special commissioners, who will take and state an account of the amount due to said Hudson & Ewing on account of the Todd legacy decree and costs therein, and interest in said decree & costs of the taxes paid by Hudson, Ewing & Benson, or Hudson & Ewing, upon the said lands, and interest on the sums paid from the day of payment at six per cent. per annum; of the fair rental value of the said "No Mistake" and "Tyrone" plantations for the several years during which the said Hudson & Ewing, or Benson, Hudson & Ewing, have occupied and cultivated or
595 leased the same, and interest on the sums so ascertained from the time they would usually become due and payable, and of the improvements and repairs put upon said plantation by the said Hudson & Ewing, or Benson, Hudson & Ewing, and interest on the value of such portions thereof from the time of payment or making said repairs and improvements as may have directly contributed to the enhanced rental value of said lands. That in estimating the fair rental value of said plantations the said commissioner shall inquire what they would have brought in money if leased together or separately to a solvent lessee or lessees on the usual or customary terms of leasing such plantations as entire plantations or an entire plantation without reference to any system of underletting pursued by said Hudson & Ewing & Benson, or either of them, during each of the years they were occupied
596 or claimed or held by said parties, or either of them, with, as well as without, the improvements claimed for by said Hudson & Ewing, and shall determine the said rental value from the proof so taken as well as that heretofore filed in the cause, and allow interest on the sums found to be due at six per cent. per annum from the time the same would usually have become due and payable.

That for all improvements and repairs which directly contribute to en-

hance the rental value of the said plantations the said commissioner shall allow the original fair cash value and interest from the date at which they were made or finished at six per cent. per annum, and for all other improvements which enhanced the permanent value of said plantations, their actual value at the time the account may be taken by them, and that the said commissioners proceed with all dispatch, giving the parties, or
597 their solicitors, reasonable notice of the time and place of taking proof and stating their account, and shall submit copies of their report and account, if desired, for the purpose of exception, charging therefor the usual fees, and forward to this court, on or before the first day of April next, their report and account, with the exceptions taken thereto, and all the proof taken by them, as to which exceptions the court reserves the right to decide on the coming in of said report, &c.

10th. That in order to facilitate the taking of said account for improvements and repairs the said Pugh and Swayzie, commissioners, will require the said Hudson & Ewing to exhibit an itemized bill of particulars of the improvements and repairs for which they claim compensation, showing the amount expended therefor, if any, by them, and when and how paid, and the dates at which they were made or erected, and if
598 any such repairs and improvements were made by the hands or sublessees on the place the said bill of particulars shall show the time they were made, and the contracts, if any, upon which they were made and their actual cash value at the present time; and if improvements and repairs upon said plantation were made by the tenants or sublessees thereon, without any contract whatever, or any compensation, the said bill of particulars shall show the extent and present value thereof and the circumstances under which the same were made, and the amounts paid or expended therefor, by the said Hudson & Ewing, or Benson, Hudson & Ewing, and the proof as to improvements and repairs shall be limited to the items in the bill of particulars furnished by said Hudson & Ewing. And the said commissioners shall inquire into the value of *of* any buildings or improvements standing on said lands at the time said Hudson, Benson & Ewing took possession thereof, and which have
599 been torn down by them or removed from the said plantations, or used by them in making other improvements in whole or in part, and will consider this matter in reaching their conclusion upon the subject of improvements. They will also inquire what, if any, improvements were unnecessarily constructed upon the said plantations, and to what extent the values of the said plantation, have been enhanced by reason of the improvements and repairs made by said Hudson & Ewing or for which compensation is claimed by them.

11th. That the complainants may hereafter take order for ascertaining the amount due them upon the notes exhibited with their bill and subsequently filed in the cause.

12. That upon the coming in of the report of the commissioners appointed by paragraph nine of this decree, exceptions thereto taken before them may be considered and determined, but no other exceptions whatever.

600 Ordered, adjudged, and decreed this 29th day of November, A. D. 1880.

R. A. HILL, *Judge, &c.*

And on the 4th day of May, A. D. 1881, the following order was made and entered of record, to wit:

CANAL BANK ET AL.)
vs.) 185.
PARTEE ET AL.)

On good cause shown, it is now ordered by the court that the time for taking proofs and stating the account in this cause between the complainants and Hudson & Ewing, under the decree made herein, on the 29th day of November, 1880, at the November term, 1880, be, and is hereby, extended as follows:

The time for taking proof by both parties is extended to the 1st day of October next.

601 The commissioners will then proceed to state an account, and will file their report in this cause with the clerk of court by the 20th day of October next.

Ordered & decreed this the 4th day of May, 1881.

R. A. HILL, *Judge.*

And on the 24th day of November, 1881, the following report of commissioners was filed in said cause, to wit:

602 *Commissioners' report.*

CANAL BANK & OTHERS)
v.) 185. In equity.
W. B. PARTEE & OTHERS.)

In the circuit court of the United States for the southern district of Mississippi.

To the honorable R. A. Hill, judge of said court:

The undersigned, special commissioners, appointed under a decree of your honorable court, rendered on the 29th day of November, A. D. 1880, in the above-styled cause, to whom was referred the papers in said cause, with instructions to take and state an account and make report in accordance with the principles decided, and instructions given in said decree, beg leave to report as follows:

That they have carefully considered the instructions given them in said decree, & carefully examined and considered each and every
603 item of the itemized bill of particulars ordered by said decree, and also the itemized amended bill of particulars ordered by a subsequent order of said court to be exhibited by Hudson & Ewing, defendants in said cause, before us as commissioners, as well as the testimony in support of and against said itemized bills of particulars, and also the testimony taken by us and introduced before us by complainants and defendants in said cause in support of and against the matters and subjects involved in said cause, as specified in said decree, and referred to your commissioners. That in stating their account under said decree in said cause, which account is hereby referred to as Exhibit A to their report, and prayed to be taken and considered as a part hereof, your commissioners

have charged said defendants, Hudson & Ewing, with what they
604 considered to be a fair annual rental value of the lands in controversy for the years during which they or Benson, Hudson & Ewing occupied, the same being for the years 1877, 1878, 1879, & 1880, with interest thereon at the rate of 6 % per annum to November 15th, 1881, estimating the rent of each year to be due and payable on the 1st January of the subsequent year, which rent or rental value of said lands, and interest, amount to, as shown by Exhibit A to this report, the sum of $8,266.87. Your commissioners charge defendants with the proceeds of the sale of a certain engine & boiler sold by them from said premises, with interest at 6 % per annum on the amount of said sale from the date thereof, amounting to $496.12, as shown by their account and itemized bill of particulars filed by said defendants, Hudson & Ewing, before us as commissioners, under said decree, and which bill of particulars and the above mentioned amended bill of particulars are hereby referred to and prayed
605 to be taken as part of this report, and as part of our account heretofore referred to as Exhibit A to this report. Your commissioners have also charged said defendants with the sum of $80.00 as the value of the old gin-house, with interest thereon at 6 % per annum from March 1st, 1877, when defendants took possession, up to November 15th, 1881, amounting to the sum of $103.00.

This gin-house is the only building or improvement standing on said lands at the time Hudson, Benson & Ewing took possession thereof, to which any value has been attached by the proof before us.

Your commissioners attach no value to, and make no charge for, other old house, on said lands at the time defendants took possession, and which were torn down by them, and some of the lumber thereof used in construction of other buildings, from the fact, as shown by the proof and
606 said itemized bill of particulars, that no charge has been made by said defendants for the lumber of said old houses used by them in construction of other houses on said lands. In stating their account, Exhibit A to this report, your commissioners have excluded from their account, said Exhibit A, such buildings and improvements as are charged in said itemized bills of particulars as they consider were unnecessarily constructed by tenants and lessees for their own convenience, by their own labor, as will appear by reference to said Exhibit A, which makes reference to and shows what items and amounts thereof charged in said bills of particulars have been by us excluded, as well as deductions made by us in prices charged in said bills of particulars. In other words, all items in said bills of particulars not embraced in Exhibit A to this report are rejected by your commissioners, and all items in said bills of par-
607 ticulars referred to in said account, Exhibit A, are by them allowed or partially allowed as a charge against or credit to said complainants and defendants, respectively, as shown by Exhibit A. Your commissioners have charged said complainants in their account, Exhibit A, with the following items and amounts, with interest at 6% per annum from their respective dates of payment, as paid by said defendants, Hudson & Ewing, or Hudson, Benson & Ewing, as will appear from said Exhibit C, to wit: The Todd legacy decree, amount paid on said lands at tax sale. Taxes paid on said lands for the years 1877, 1878, & 1879. The original fair cash value of improvements and repairs put upon said

lands by said defendants as necessary, and which enhanced the permanent and rental value of said lands or plantations, as considered under the provisions of said decree, together with the interest at 6 % per annum upon all sums paid by said defendants for said improvements
608 as shown and set forth in said Exhibit A to this report.

Your commissioners report that no contracts, except that of I. J. Kent for improvements on said lands have been filed before them, and in their estimates and calculations they have been governed by said itemized bills of particulars, and the testimony introduced in support of the same. That in taking the proof in said cause as referred, complainants and defendants were represented by counsel.

Your commissioners consider that the values of said lands or plantations have been enhanced by reason of the improvements put upon them by said defendants, Hudson & Ewing, to the extent of the ratio of the yearly rental value of the same, as shown by their account, herewith filed as Exhibit A, and for which rents they have charged the defendants.

Your commissioners herewith return into your honorable court
609 the decree under which they have acted in said cause, together with the bill of particulars, and amended bill of particulars, ordered to be exhibited by said defendants, Hudson & Ewing, and the testimony taken by them and complainants, and filed with said commissioners in the matter of said reference, as well as their account stated, and marked and referred to as "Exhibit A" to this report, showing the amount due by said defendants to said complainants to be the sum of $8,865.99, and the amount due by said complainants to said defendants to be the sum of $37,697.92, and the balance due defendants of $28,831.93. On all allowances made for improvements put upon said lands from the dates of the several items, respectively, your commissioners have computed interest at 6% per annum up to November 15th, 1881, the date of stating said account, and on all other amounts embraced in said Exhibit A, at 6%
610 from their respective dates up to the time of stating said account, all of which is respectfully submitted for consideration.

N. T. PUGH,
S. W. SWAYZE,
Commissioners.

Your commissioners further state, as an addition to their foregoing report, that they have furnished a copy of said report and a copy of said Exhibit A to one of the counsel for complainants, defendants not desiring one. They further state that no exceptions to said report or account have been filed with them, and consequently none can accompany the papers which the decree in said cause directs your commissioners to forward with their report to your honorable court.

N. T. PUGH,
S. W. SWAYZE,
Commissioners.

And on the 29th day of November, 1879, the following exceptions were filed to said report by complainants, to wit:

611 In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK & OTHERS
vs. } 185.
W. B. PARTEE & OTHERS.

And now comes the complainants in the above-entitled cause, and say that the account & report of the Commissioners Pugh & Swazze herein filed on the 24 day of November, 1881, are unfair, illegal, unjust, and in contravention of the decree of this honorable court and the evidence taken under the same, and complainants do therefore except to the same, and pray that they be disallowed and rejected, and that the papers be referred to said or other commissioners to restate the same on proof filed & to be filed, &c., and for causes the complainants assign the following, to wit:

1. The *Complainants* failed to charge the defendants, Hudson & Ewing, with the fair rental value of the "No Mistake" & "Tyrone" plan-
612 tations during the years 1878, 1879, 1880, and 1877, as shown by the proof taken. The fair rental value for 1879 and 1880 was not less than $3,000 per annum, that for 1878, $2,500, and that for 1877, $2,000.

2. The said commissioners erred in crediting the account of Hudson & Ewing with the value of the old gin-house, & interest 838, and engine & boiler sold L. P. King, and in debiting against complainants in their favor the cost & expense of building the new gin and saw-mill and the expense of purchasing a new engine & boiler. The proof shows that the old gin, saw-mill, & boiler were about as good as the new, and that the boiler now on the place is old and worthless, and that the engine & boiler sold King were purchased by Hudson & Ewing.

3. The commissioners erred in allowing interest on the several items debited in their report and account A against complainants. The defendants were not entitled to interest thereon under the decree of the court.

613 4. The said commissioners erred in allowing items from one to one hundred and sixteen, inclusive, of the first claim for improvements, contained in the bill of particulars of improvements, filed by R. G. Hudson before the commissioners on the 14 March, A. D. 1881, under the headings "Houses," "Gin-house;" none of said items were allowable, but the actual cash value of the gin-house, &c., &c., should have been ascertained and fixed by the commissioners. The repairs thereon made from time to time and expenses incurred in operating the gin, &c., &c., are improperly allowed, and complainants are not chargeable with the engine, &c., bought by said Hudson & sold at a loss.

5. The said commissioners erred in allowing items 117 to 124, both inclusive, of the second claim for improvements contained in said bill of particulars under heading "Houses for tenants." The cost of
614 said houses was not the test, but their actual value at the time of taking the account, and interest on their value was not allowable. Besides, the brick consumed were made on the plantation, and the proof shows the houses to be worth 120$ each, & no more.

6. The said commissioners erred in allowing items 125 to 151, inclusive,

both of the third claim for improvements contained in said bill of particulars under heading "Houses built by sundry parties, nearly or in part of old lumber." The amounts charged are not shown to have been expended by Hudson & Ewing, and they far exceed the value of the cabins. Brick charged at $10 per M were made on the plantation, and should only have been estimated at the cost. The houses as repaired were not worth half the amount charged, and really the whole of the labor was done by the tenants themselves free of any charge.

7. The said commissioners erred in allowing items 152 to 162,
615 both inclusive, of the fourth claim for improvements contained in said bill of particulars under heading "Fences." More is charged by 25 % than the fences are actually worth, and much of the fencing was done by the tenants at their own cost and for their own convenience.

8. The said commissioners erred in allowing items 163 to 165, both inclusive, of the fifth claim for improvements contained in said bill of particulars under heading "Hog lot." The pretended improvements were only temporary, and are utterly valueless now, and were never paid for by Hudson & Ewing.

9. (Withdrawn.) The commissioners erred in allowing the item 166 in said bill of particulars for plantation bill & fixtures. The amount charged is excessive and the bill useless.

10. The said commissioners erred in allowing items 167 to 173, both inclusive, of the sixth claim for improvements contained in said bill of particulars under heading "Gates." The gates are not worth ex-
616 ceeding $8 each, and the amount allowed should not have been exceeding $70.

11. The said commissioners erred in allowing items 174 to 215, both inclusive, of the seventh claim for improvements contained in said bill of particulars under heading "Ditches." They seem to have been made for a temporary purpose, were wholly filled up when the trustee took charge, and were and are of no benefit to the property whatever. On the contrary they were positively injurious to the property, and have damaged it exceedingly. Their present value does not exceed $200.

12. The said commissioners erred in allowing items 216 to 234, both inclusive, of the eighth claim for improvements contained in said bill of particulars, under heading "Bridges." Many of the bridges are county bridges, built by the county of Yazoo, and the others are of little or no value. In fact $100 would cover the value of all of them properly chargeable.

617 13. The said commissioners erred in allowing items 235 to 272, both inclusive, of the ninth claim for improvements contained in said bill of particulars under heading "Cotton-houses." These houses were built by the tenants at their own cost & expense, & for their own accommodation; they were merely temporary structures of no sort of value, and Hudson & Ewing paid out nothing for them.

14. The said commissioners erred in allowing items 273 to 309, both inclusive, of the tenth claim for improvements contained under heading "Improvements around tenants' houses." These improvements were put up by the tenants at their own cost and expense and for their own benefit, & Hudson & Ewing expended nothing for them. The peach trees charged for are all dead, and did not cost as much as $15 per hundred.

15. The said commissioners erred in allowing items 310 to 315, both inclusive, of the eleventh claim for improvements contained in said
618 bill of particulars under heading "Clearing land." The amounts were never expended by Hudson & Ewing. The clearing was done by the tenants at their own cost & expense, and in no instance was the clearing worth exceeding $2 per acre.

16. The said commissioners erred in considering the bill of particulars for improvements filed as aforesaid by said Hudson & Ewing, because the said bill of particulars did not conform to the tenth stipulation of the decree rendered herein by the court on the 29th November, A. D. 1880.

17. The said commissioners erred in not considering and determining whether any improvements were unnecessarily constructed upon the said plantations, and to what extent the values of the plantations involved in this suit have been enhanced by reason of the improvements and repairs made by said Hudson & Ewing, or for which they claim compensation.

18. The said commissioners erred in not ascertaining and report-
619 ing the value of any buildings standing on said plantations at the time Hudson & Ewing took possession, and which have been torn down by them, or removed from the plantation, or used by them in making other improvements.

19. The said commissioners erred in finding a balance in favor of Hudson & Ewing, amounting to $28,000, and in allowing items 317 to 334 amended account. The real balance due them should not have exceeded $14,000.

Wherefore complainants do except to the said report & account, & pray that the same be set aside & for nothing held, and that the papers & proofs taken be referred to commissioners of this court to state an account, &c., &c., and take such further proof as may be submitted to them by the parties.

NUGENT & HARLOW, *P. Q.*

And on the 2nd day of December, 1881, the following interlocutory decree was made and entered in said cause, to wit:

620 CANAL BANK & OTHERS)
v.
WM. B. PARTEE & OTHERS.)

This cause came on this day to be heard, the motion of the complainants for further time within which to take proofs, &c., &c., and the court, after argument heard, being sufficiently advised thereof, doth order, adjudge, & decree as follows:

1. That complainants have leave to take such additional proof as they may be advised is proper or necessary, within thirty days from this date, at Yazoo City, in this State, and before any United States commissioner, or other persons authorized by the laws of this State to administer oaths, on five days' notice to defendants or their solicitors, after which defend-
ants shall have thirty days to take their additional proof in like
621 manner, and on like notice. All the testimony so taken shall be returned into this court, and be considered at the hearing of the exceptions to the report of the commissioners, Pugh & Swayze.

2. That N. H. Luse, trustee, &c., shall forthwith lease the "No Mis-

take" and "Tyrone" plantations for the year 1882, at private or public letting, as he may think to the best interest of the creditors represented by him, and all parties in interest, and shall secure the same in such manner as he shall think advisable, and shall make report thereof to the January special term of this court.

3. That the exceptions to the report made by Pugh & Swayze, commissioners, to state the account of rents, &c., and the motion to confirm the same, and all other motions in this cause undisposed of, be, and the
622 same are hereby, continued until and set for hearing upon the 3rd Monday of the January adjourned term of this court, at which term the cause shall be finally disposed.

Ordered, adjudged, & decreed this 2nd day of December, 1881.

R. A. HILL, *Judge*.

And on said 2nd December, 1881, the following decree was made and entered of record in said cause, to wit:

CANAL BANK ET AL.
v.
PARTEE ET AL.

On motion of Hudson & Ewing, it is now ordered and adjudged by the court that N. H. Luse, the substituted trustee & receiver herein, pay forthwith to Hudson & Ewing the rent of "No Mistake" and "Tyrone" plantations for the year 1881, as a credit on the Todd legacy decree,
623 after first deducting the cost of a boiler, freight on same, & putting up same, authorized to be purchased by a former decree of this court, the taxes for 1880 & 1881 on said plantations, a gin-stand purchased by him, and the costs of taking the account between Hudson & Ewing and the complainants, and after deducting also 5 per cent. commissions and his necessary personal expenses actually incurred by said receiver in executing his trust, in settling the cost of taking the said account between complainants and Hudson & Ewing, said receiver shall pay to Hudson & Ewing such costs as have been paid by them, and to complainants the costs paid by them in respect to said account. The commissions above indicated not to conclude the receiver from any further
624 allowance of commissions, which, if allowed, to be paid out of future rents.

R. A. HILL, *Judge*.

And on the 17th day of February, 1882, the following order was made and entered of record, to wit:

CANAL BANK ET AL.
v.
W. B. PARTEE & OTHERS.

By consent of parties, it is ordered, adjudged, and decreed that the opinion of the court this day rendered in this cause and the schedule thereto attached be filed and treated as part of the record in the cause, and that the court may, by order, without reference to a commissioner, ascertain and fix the several amounts, as well as the aggregate sum due to the de-

fendants, Hudson & Ewing, under the decree rendered in this cause
625 on the 29 November, 1880. And it is further ordered, adjudged, and decreed, that the papers in this cause be, and the same are hereby, referred to James M. McKee, clerk of this court, to ascertain and determine the amounts due to the complainants severally upon the notes exhibited with the bill, and afterwards brought into the cause, after distributing among them, and debiting against them the sum of $6,342.91, realized on the 5th day of April, A. D. 1880, from the sale of the "Lake Dick" plantation, under a former decree in this cause.

The opinion rendered by said court in said cause on said 17th Feb'y, A. D. 1882, is in the words and figures following, to wit:

626 In the circuit court of the United States for the southern district.

CANAL BANK ET ALS.
vs.
W. B. PARTEE ET ALS.

The questions now to be decided arise upon complainants' exceptions to the account stated and the report made thereon by the commissioners to whom this cause was referred.

As I am satisfied that the account is not in accordance with the directions of the court or the equities between the parties, therefore the exceptions need not be further considered, and are overruled. I have examined and re-examined the account filed by the defendants, and have maturely considered the testimony on both sides, and have arrived at conclusions which I am satisfied meets the equities in both sides as nearly as can
627 reasonably be reached. Defendants, Hudson & Ewing, went into possession of the two plantations the first of January, 1877.

The area of land then fit for cultivation was about 300 acres; this land had been rented the year before at $10 per acre, but owing to the dilapidated condition of the improvements only $7.50 were charged for this year. The gin on the plantations was not in sufficient repair to gin this crop.

83 acres of the land enclosed was by the tenants cleared of weeds, willows, &c., and put in cultivation for the use of the land that year, and no other compensation given for it.

The repairs of the fences that year were of a most temporary character and made by the tenants without charge. $1,000.00 for the rent that year is certainly a very low charge, but considering the condition of the improvements and surroundings, the rent for that year will be fixed at that sum.

628 In the year 1878, commenced at the close of 1877, these defendants demolished the old gin-house, and out of the timbers and new lumber purchased erected a new gin-house, and purchased a new engine, boiler, gin, press, and machinery afterwards, and after having used it two years sold the engine and boiler and repaired an old one, retaining the press. For the entire expense of erecting the gin-house, sheds, repairing the old engine, boiler, and machinery, and furnishing machinery, purchasing gins and press, a charge of $3,199.37 is made.

It is claimed this was one of the repairs and improvements which was necessary, and inhanced the rented value of the premises. It is true that it is a great convenience, and might be added to the rental value to the owners of the premises; that is, that they might make, and doubtless did
629 make, a profit out of running the gin and mill, and it doubtless was a convenience both to them and their tenants, but I am equally satisfied that under the low estimates, made of the rents these improvements were not, or at least ought not to have been, considered as constituting part of the rents. They cannot be considered otherwise than as adding to the permanent value of the lands. I have closely examined the account, and making a liberal allowance for the cash value of the same on the 1st Jan'y, 1881, when the same were surrendered to the receiver, the sum of $2,053.50 is all that should be allowed, and therefore that sum will be allowed to bear interest at 6 per cent. per annum from the 1st Jan., 1881, to the present time.

The items grouped in classes constituting this charge will be found in Schedule No. 1, herewith filed. In 1878 defendants furnished ma-
630 terials and erected quite a number of substantial tenant houses, a manager's house, outhouses, with substantial enclosures, built substantial cribs, blacksmith shop and ware room, had numerous ditches made, &c., which it is claimed were necessary and inhanced the rental value of the place, and should be estimated at their original cost and interest.

That these improvements did tend to inhance the rental value of the land, I think there can be no doubt, but the land could have been rented if the houses had been less expensive; the value of these improvements consist mainly in these permanency, which should be estimated at the cash value when the property was surrounded, but as it did contribute to some extent to the rental value for that and succeeding years during defendants occupancy, I have allowed more than the permanent value and
631 less than the cost

The whole value of these improvements at a fair estimate under this rule amounts the sum of $4,897.35. From this sum deduct the sum of $2,500.00, being the rent for 1877, at $1,000.00, and $1,500.00, the estimated rent for 1878, leaves the sum of $2,397.35, this sum to bear interest at 6 per cent. per annum from the first of January, 1879, to the present time.

The increase of the rent from $1,000.00 to $1,500.00 is very moderate when we consider that 83 acres of cleared land had been added, and the other very valuable improvements; a schedule of these sums, in classes, will be found filed herewith, marked "Schedule No. 2."

In 1879 the defendants made further improvements in furnishing materials and buildings, including tenants' houses, cribs, stables, sheds,
632 shops, inclosures, &c., and in making ditches, of the same character with those erected in 1878, which, at an estimate made under the rule above stated, amounts to the sum of $2,997.68, from which take the sum of $2,500, as estimated as a reasonable rent for that year, leaving the sum of $497.68, this sum will be allowed with 6 per cent. interest from the 1st of January, 1880, to the present time.

This increase of rent is very reasonable, when we consider that more land had been reduced to cultivation and the increased accommodation to tenants; if this is to' much the rent for 1878 was too small, so that the average is fair.

The items containing these estimates, under the rule above stated, will be found in Schedule No. 3.

The repairs shown to have been done in 1880 were small, but
633 there are several items of charge made for improvements done, including the years 1878, 1879, and same, though not so much, in 1880, which have not yet been stated, and cannot well be done, only as a whole; but before considering them I will dispose of the item of ditching made in 1880, amounting in all to $388.65, which it is insisted should be charged as an item of expense.

The proof shows that when the premises were turned over to the receiver many of these ditches were filled up; some of the witnesses say it would have cost one-third as much to clear them all out as to open them, which would be over $600.00. I am satisfied that this estimate is too high, but it was the duty of the defendants, if claiming compensation for opening them, to keep them cleaned out; therefore I am of opinion
634 that it is not unreasonable to disallow this item of $388.65 for ditching in 1880, and it is so done. There is a plantation bell made a charge, which is allowed, at $80.00.

There is a charge for fencing, for the sum of $1,459.23. These fences were made mostly during 1878, 1879. The proof shows that the materials were mostly furnished on the ground by defendants, and with some labor furnished by defendants were put up by the tenants without charge. I am satisfied that one-fourth of the cost was done without charge to defendants, and should be deducted from the sum charged, which reduces that item to the sum of $1,120.41. There is a claim for erecting cotton-houses for the tenants for amounts varying from $10 to $30 each.

These were made of polls or small logs and covered with boards, and made by the tenants for their own convenience, and for which they charged
635 the defendants nothing, but the proofs shows that defendants furnished the nails and in some instances hinges, and also in some instances hauled the logs and boards. I am satisfied an average of $5 for each house or pen will cover all the outlay of defendants for this purpose, and is all that should be allowed; the same amounts to $190.00.

There is also a considerable item charged for improvements made about the tenants' houses, such as cribs, stables, sheds, garden fences, &c. These improvements the proof shows were made by the tenants themselves, for their own convenience, and without charge to defendants, other than nails, and in some instances hinges and hauling, the lumber used being mostly old waste lumber, from old buildings, except such as the
636 tenants procured from the woods on the land. I am satisfied that $250 is a fair allowance for this item, and it is allowed. There is a charge for cisterns and one or more wells; this item is allowed at $358, the cost.

There is an item for building gates, and these gates are shown to be better than ordinary gates, and are charged at full rates. I am of opinion, however, that $200 is a reasonable charge, and it is allowed at that sum, the charge made being $250.

There is a charge for furnishing materials and building numerous bridges at $524.00. The proof shows that the materials were mostly furnished by defendants, and that they had some hands employed in doing the work, but that the work was mostly done by the tenants without charge.

The proof shows that some of these bridges were very small affairs,
637 and the sums charged must be an over-estimate; allowing for this, and the fact that most of the work was done by the tenants without charge, this item is reduced to $350 and allowed at that sum.

There is a charge made for clearing land for the sum of $2,432.00. The proof shows that nearly all of this land had formerly been cultivated, and was within the enclosures; that it had grown up in weeds, and portions of it in willow bushes, and in some places in cotton-wood, but that most of it had been cleared off by the tenants and cultivated one year free of charge, and without cost to defendants.

Some of it was cleared by hired labor, but it was comparatively a small portion. After looking over the account and considering the testimony, I am satisfied that $700 is a reasonable allowance for this charge.

These items, all taken together, including improvements made in
638 1880, amount to the sum of $3,655.16. From this sum deduct the sum of three thousand dollars, the estimated rent for 1880, and there remains the sum of $655.16 which will bear interest from the first day of January, 1881, to the present time, at 6 per cent. per annum. The increased rent is very reasonable when the improvements for 1879 are considered. The cause must be referred for an estimate of the sums stated in the foregoing opinion, and the other sums due defendants which are not disputed, together with interest up to the present time.

R. A. HILL, *Judge.*

The schedules referred to in the foregoing opinion, & filed therewith, are in the words & figures following, to wit:

639 SCHEDULE NO. 1.

Gin-house	$475 00
Shed, meal-room, &c	250 00
Well	12 50
Furnace & repairing	125 00
Materials furnished, and repairing engine, boilers & machinery	620 00
Gin-stand	275 00
Press	260 00
Lightning rod	36
	$2,053 50

The above are permanent improvements estimated at their value on the first Jan., 1881.

640 SCHEDULE NO. 2.

1878.	
Building manager's house, and houses and enclosures	$1,000 00
Buildings, cribs, stables, enclosures	500 00
Building 10 tenant houses	1,500 00
" 2 " "	275 00
Side rooms to same	35 00
Building 1 double-framed house	275 00

Building out of old lumber and repairing tenant houses.....	299 25
Ditching.....	1,013 10
	$4,897 35
Deduct rent for 1877 & '78.....	2,500 00
	$2,397 35

641 SCHEDULE No. 3.

1879.	
Building 8 tenant houses.....	$1,000 00
" 1 house near the gin.....	225 00
Furnishing materials and repairing tenant houses.....	372 68
Cribs, black'shop, sheds, and enclosures.....	795 00
Ditching.....	570 00
Locating same.....	35 00
	$2,997 68
From which take rent for 1879.....	2,500 00
Leaves.....	$497 68

642 SCHEDULE No. 4.

1880.	
Repairing tenant houses.....	$321 25
Building gin & meal-house.....	85 00
Plantation bell.....	80 00
Making gates.....	200 00
Building bridges.....	350 50
Furnishing nails & other materials, &c., for cotton-houses...	190 00
Furnishing nails and other materials, &c., for cotton-houses...	250 00
Cisterns.....	358 00
Clearing land.....	700 00
Fencing.....	1,120 41
	3,655 16
From which take rent for 1880.....	3,000 00
Leaves.....	655 16

643 And on the 17th day of Feb'y, 1882, the following report of special commissioner was filed in said cause, to wit:

644 In the circuit court of the United States for the southern district of Mississippi.

CANAL BANK & OTHERS
v.
W. B. PARTEE & OTHERS.

To the honorable the judges of said court:

The undersigned, to whom was referred, by the decree of your honorable

court rendered on the 17 Feb'y, A. D. 1882, the papers in the above-stated cause "to ascertain and determine the amount due to the complainants severally upon the notes exhibited, with the bill, and afterwards brought into the cause, after distributing among them and crediting against them the sum of sixty-three hundred and forty-two $\frac{91}{100}$ dollars ($6,342.91) realized on the 5th day of April, 1880, from the sale of 'Lake Dick' plantation under a former decree of this court," respectfully reports that he has carefully examined all the papers in said cause and finds the amounts due the several complainants upon said notes, this day, as follows, to wit:

645	Principal of five notes payable to the order of J. Marsh Denman	4,500 00	
	Int. to 5 April, 1880, at 8 %	4,816 00	
		9,316 00	
	Credit by pro rata share of $6,342.91 realized from sale of "Lake Dick" plantation on 5th April, 1880	1,245 27	
		8,070 73	
	Int. on bal., 8 %, to this date	1,205 19	
	Total due this 17th Feb'y, 1882		9,275 92
	Principal of 5 notes payable to order of Canal Bank	5,000 00	
	Int. to 5th April, 1880	3,351 09	
		10,351 09	
	Credit by pro rata share sale of "Lake Dick"	1,383 63	
		8,967 46	
	Int. on bal., 8 %, to this date	1,338 50	
	Total due this 17 Feb'y, 1882		10,305 96
	Principal of five notes payable to order of E. Dupassier & Co	3,600 00	
	Int. to 5th April, 1880, at 8 %	3,852 80	
		7,452 80	
	Credit by pro rata share sale "Lake Dick" plantation	996 21	
	Balance	6,456 59	
	Int. on bal., 8 %, to this date	964 09	
	Total due this 17 Feb'y, '82		7,420 68
	Am't carried forward		27,002 56
646	Amount bro't forward		27,002 56

Principal of five notes payable to order Union Bank of Louisiana	2,207 50	
Int. to 5th April, 1880, at 8 %	2,362 56	
	4,570 06	
Credit by pro rata share sale of "Lake Dick"	610 88	
Balance	3,959 18	
Int., on bal. to this date, 8 %	582 83	
Total am't due Feb'y 17, 1882		4,542 01
Principal of five notes payable to order Louisiana State Bank	2,115 00	
Int. to 5th April, 1880, at 8 %	2,263 07	
	4,378 07	
Credit by pro rata share of "Lake Dick"	585 25	
Balance	3,792 82	
Int. on bal. to this date, 8 %	462 34	
Total due Feb'y 17, 1882		4,255 16
Principal of five notes payable to order of Crescent Bank	2,000 00	
Int. to 5th April, 1880	2,140 52	
	4,140 52	
Credit by pro rata share sale of "Lake Dick"	554 46	
Balance	3,586 06	
Int. on bal. to this date, 8 %	535 58	
Total due Feb'y 17, 1882		4,121 64
Principal of five notes payable to order Citizens' Bank of Louisiana, owned by H. W. Connor & Son	3,500 00	
Int. on same to 5th April, 1880, at %	3,745 64	
	7,245 64	
Credit by pro rata share sale of "Lake Dick"	968 52	
Balance	6,277 12	
Int. on bal. to this , 8 %	937 57	
Total due Feb'y 17, 1882		7,214 69
Grand total due Feb'y 17, 1882		$47,136 06

647 Respectfully submitted this Feb'y 17, 1882.

J. M. McKEE, *Cle'k & Com'r.*

And on the 18th day of February, A. D. 1882, the following decree for sale of land was made and entered of record, as follows, to wit:

648 In the circuit court of the United States for the southern district of Mississippi.

CANAL BANK & OTHERS)
vs.
W. B. PARTEE & OTHERS.)

Be it remembered that on the 17th day of February, A. D. 1882, came on to be heard the exceptions taken by the complainants to the report of the commissioners, N. T. Pugh and S. W. Swayze, appointed by the decree herein rendered on the 29th day of November, 1880, to take and state an account of the rents and profits and improvements, &c., as directed by this court, and the court being thereof sufficiently advised, and being of opinion that the said report does not conform to the decree of this court, doth order, adjudge, and decree that said report and the account therewith presented be set aside; and the court, after argument of counsel,

649 proceeding to the decision of the several questions of law and fact involved in the cause, doth find and adjudge that there is now due to the defendants Hudson & Ewing, under the judgment & findings of the court on said exceptions, on account of the Todd legacy decree, twelve thousand three hundred and sixty-five $\frac{77}{100}$ dollars, and on account of the taxes paid out by said defendants upon the lands set out in the pleadings as constituting the "Tyrone" and "No Mistake" plantations, the further sum of fifteen hundred and sixty-seven $\frac{44}{100}$ dollars, and that, after ascertaining and crediting the amount due for reasonable rents of said plantations, there is a balance due to the said defendants on account of improvements, repairs, and betterments, amounting to the further sum of

650 six thousand three hundred and nine $\frac{69}{100}$ dollars, and that there is therefore the total sum due the defendants of twenty thousand two hundred and forty-two $\frac{83}{100}$ dollars, which bears interest from this date at six per cent. per annum; and the court, being further of opinion from the report of commissioner, which is hereby confirmed, that there is a balance due to complainants upon their notes exhibited with their bill as follows, to wit: J. Marsh Denman, $9,275.92; Canal Bank, $10,305.96; E. Dupassier & Co., $7,420.68; Union Bank of Louisiana, $4,542.00; Louisiana State Bank, $4,255.16; Crescent City Bank, $4,121.64; Citizens' Bank, of Louisiana, usees H. W. Conner & Son, $7,214.69, making in the aggregate the sum of ($47,136.06) forty-seven thousand one hundred and thirty-six $\frac{06}{100}$ dollars, which bears interest from this date at the rate of eight per cent. per annum, doth order, adjudge, and decree as follows:

651 1st. That the complainants are entitled to the redemption of the lands constituting "No Mistake" and "Tyrone" plantations, and set out in stipulation eight to the decree herein rendered on the 29th November, A. D. 1880, and that upon their paying to the defendants the said sum of twenty thousand two hundred and forty-two $\frac{83}{100}$ dollars, with interest from *interest from* this date at the rate of six per cent. per annum, they shall be substituted to the rights of said defendants, Hudson & Ewing, as senior encumbrances upon said lands, and may enforce payment thereof by a sale of said lands as hereinafter directed, in case of their failure to pay the said sum of money, and the said complainants shall have sixty days within which to pay the said sum of money.

2. That if said complainants shall fail to pay to said defendants
652 the said sum of twenty thousand two hundred and forty-two $\frac{83}{100}$, and interest, within the time hereby limited, then the lien in favor of the said Hudson & Ewing, as well as that in favor of the complainants, shall be and the same are hereby enforced, and the lands constituting the said two plantations, to wit, south half section nine, the south half northeast quarter and south half of the northwest quarter of section ten, the south half northwest quarter and west half of the northeast quarter of section eleven, all of section fourteen, the north half and east half of the southeast quarter of section fifteen, the north half and the southeast quarter of section twenty-three, and the west half of section twenty-four, all in township nine of range four west, lying in the county of Yazoo, in this State, are hereby adjudged and decreed to be sold at public auction
653 to the highest bidder during the month of October next, by the trustee, N. H. Luse, in whom the title is vested, upon the following terms: one half cash in hand, and the balance in six and twelve months, equal installments, the purchaser to give bond and security for the payment of the purchase-money, with six per cent. per annum interest, in addition to the lien on the land sold to be retained in his deed, and after ninety days' notice of the time, place, and terms of sale by advertisement thereof in some public newspapers printed and published in the cities of Vicksburg, Mississippi, New Orleans, Louisiana, and Memphis, Tennessee.

3d. That the said trustee, out of the purchase-money, shall pay first the amount due the defendants Hudson & Ewing, and interest thereon at six per cent. per annum, and the balance to and among the complainants
654 ratably, or to the attorneys of the complainants and defendants. In making said sale the said plantations shall be sold separately.

4th. That the said trustee shall make *make* report of his proceedings under this decree to the term of this court next after the sale of said lands, returning with his report all deeds made by him and bonds for purchase-money taken by him, the receipts of the parties or their solicitors for the sums of money paid to them. He will, out of the rents in his hands and the rents for the current year, pay all the unpaid costs of this cause and the costs of executing this decree, including his commissions.

5. That if the defendants Hudson & Ewing bid for and purchase the said lands they shall only be required to pay the surplus of their bid over and above the amount due them as herein determined and fixed; and if the complainants jointly purchase said lands, they shall only be re-
655 quired to pay to said trustee the amount due to the defendants Hudson & Ewing. Beyond these sums complainants and defendants may execute and deliver to the said trustee their receipts.

6th. That this decree shall in nowise affect the right of the parties to an account and settlement with the said N. H. Luse, trustee and receiver of this court, and such orders in that respect may be taken hereafter as the parties may be advised is expedient and proper. And thereupon the complainants, having in open court prayed an appeal from this decree to the Supreme Court of the United States, the same is granted to them to operate as a supersedeas upon their entering into bond, within sixty days from this date, in the penalty of seven thousand dollars, with two or more good and sufficient securities, and conditioned according to law.

656 Ordered, adjudged, and decreed this 17th day of February, A. D. 1882.

R. A. HILL, *Judge*.

And on the 23rd day of March, A. D. 1882, the supersedeas & appeal bond of complainants was filed in said cause in the words and figures following, to wit:

657 Supreme Court of the United States.

THE CANAL BANK OF LOUISIANA & OTHERS *vs.* W. B. PARTEE AND OTHERS. } 185. N. S. On suit as against Hudson & Ewing.

Know all men by these presents that we, the Canal Bank, the Cres'ent City Bank, the Union Bank, the Louisiana State Bank, J. Marsh Denman, E. Dupassie & Co., A. Redault, and H. W. Conner & Son, as principals, and J. J. Gidien and William L. Nugent, as securities, are held and firmly bound unto Robert G. Hudson and C. C. Ewing, in the sum of seven thousand dollars, to be paid to the said Hudson & Ewing, their executors, administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 17th day of March, A. D. 1882.

658 Whereas the above-named principal obligors have prayed an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the southern district of Mississippi, on the 17th day of February, A. D. 1882, whereby it was adjudged that the said Hudson & Ewing were entitled to the sum of $20,242.83, to be paid first out of the proceeds of sale of the lands set out in the pleadings and decree, and have obtained the same:

Now, therefore, the condition of this obligation is such that if the above-named principal obligors shall prosecute their said appeal to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

SAM'L H. KENNEDY,
Pres't State Nat'l Bank (formally Louisiana State Bank).

659 ESTATE OF J. M. DENMAN,
By F. H. HATCH, *Ag't* [SEAL.]
[SEAL.] SAM'L H. KENNEDY, *Assignee*,
DUPASSIE & CO. [SEAL.]
[SEAL.] E. D. LE BRETON, [SEAL.]
Assignee Crescent City Bank, N. O.
J. C. MORRIS, [SEAL.]
Pres't Canal Banking Co.
H. W. CONNER & SON, [SEAL.]
Ass. Liz.
W. L. NUGENT. [SEAL.]
J. J. GIDIEN. [SEAL.]
[SEAL.] C. KOHN, [SEAL.]
Pres't Union Nat. Bank.

Sealed & delivered in the presence of—

[SEAL.] M. M. COHEN,

U. S. Commissioner for the 5th Circuit & Eastern District of Louisiana.

I approve the above bond.

, *Judge, &c.*

I approve the foregoing bond with the sureties thereto this March 22d, 1882.

R. A. HILL, *Judge, &c.*

660 UNITED STATES OF AMERICA,
Southern District of Mississippi:

I, Jas. M. McKee, clerk of the circuit court of the United States for the southern district of Mississippi, do hereby certify that the foregoing six hundred & fifty-nine (659) pages contains a true, full, and perfect transcript of the record in the cause lately pending in said court, wherein the Canal Bank and others were complainants, and W. B. Partee and others were defendants, so far as pertains to the controversy between complainants and Hudson & Ewing, as fully and completely as the same now remains of record in my office.

Given under my hand and the seal of said court, hereto affixed at office in Jackson, in said district, this the 25th day of September, A. D. 1882.

[SEAL.] JAS. M. McKEE, *Clerk.*

(Indorsement on cover:) No. 628. The Canal Bank, the Crescent City Bank, the Union Bank, the Louisiana State Bank, J. Marsh Denman, E. Dupassie & Company, A. Redault, and H. W. Conner & Son, appellants, vs. Robert G. Hudson and C. C. Ewing. S. Mississippi C. C. U. S. Filed 2nd October, 1882.

111-66

OFFICE SUPREME COURT U.S.
FILED
FEB 1 1884
JAMES H. McKENNEY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883

No. 628.

THE CANAL BANK ET AL.

vs.

ROBERT G. HUDSON AND C. C. EWING.

Brief on the part of the Appellants.

WM. A. MAURY,
W. HALLETT PHILLIPS,
for Appellants.

R. O. POLKINHORN, PRINTER, 632 and 634 D Street.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883

No. 628.

THE CANAL BANK ET AL.

vs.

ROBERT G. HUDSON AND C. C. EWING.

Brief on the part of the Appellants.

STATEMENT OF THE CASE.

This is the second appeal in this cause.

The decision on the first appeal is reported in 99 U. S., p. 326, under the style of *Bank* vs. *Partee*, a very succint reference to which is necessary as a part of the statement of the phase of the case involved in this appeal.

Sarah D. Partee, the wife of William B. Partee, being largely indebted, as touching contracts growing out of her separate property, made overtures for a composition with her creditors, the basis of which

was a deed of trust, executed by the said Sarah and her husband, and conveying a large amount of property to one Bowman in trust for the benefit of all creditors who should accept the terms of the deed.

But *before* this deed of trust was executed a judgment had been obtained by one Stewart against the said Sarah D. Partee for nearly $7,000, which judgment was, if valid, a lien on the real estate embraced in the deed. And afterwards the said real estate was sold by virtue of an execution is sued on the said judgment, and purchased in part by Stewart, the judgment creditor, and in part by one James D. Partee, and duly conveyed to them by the sheriff.

In this state of things the Canal Bank and other creditors filed a bill for the purpose of assailing the validity of the said judgment, or, at the very least, of being let in to redeem the land sold from the same, and of enforcing the trusts declared in the said deed of trust.

The only questions handled by this court on the appeal were (1) the validity of the Stewart judgment, and (2) whether the complainants in the bill had accepted the terms of the trust deed in accordance with its requirements ; and the decree of this court was, that the judgment was a total nullity, and that the complainants and appellants were entitled to have the trusts of the deed enforced. Thus much touching the first appeal. We now proceed to state the case as presented on this second appeal.

The original bill, the initial point of this litigation, was filed on the 1st April, 1873.

As we have already said, the purchasers under the execution on the Stewart judgment were Stewart himself, and one James D. Partee. The land bought by Stewart, with the exception of one acre, not being involved in any question arising on this appeal, may be laid out of view; but a part of that bought by James D. Partee is involved in this appeal.

The land purchased by James D. Partee, under the execution, embraced three plantations known, respectively, as "No Mistake," "Tyrone," and "Seven Gums."

On the 24th February, 1870, the said Partee and wife conveyed the said plantations to Fountain Barksdale in trust to secure a debt of over $41,000 to Nelson, Lamphier & Co., (R. p. 53,) which deed was foreclosed by sale, in accordance with the deed, to Thomas A. Nelson a member of the firm secured, and conveyed to him by the trustee Barksdale by a deed dated 15th June, 1872. (R. pp. 62, 63.)

On the 15th April, 1873, two weeks after the filing of the original bill in this cause, the said Thomas A. Nelson, conveyed the plantations in question to one Robert H. Short in trust, to secure a debt of $35,000 due the firm of Nelson, Lamphier & Co. (R. pp. 159, 161.)

Among the notes secured by this deed several came to the hands of Joseph P. Benson and Charles C. Ewing, administrator of S. S. Ewing, who, together with the holders of the other notes so secured, filed a bill to foreclose the said trust deed in the Chancery Court of Yazoo County, and such proceedings were had

therein as that a decree of foreclosure was entered. (R. pp. 154–200.) Afterwards, to wit on 19th February, 1877, the lands in question were sold under the said decree to the said Benson and Ewing and one Robert G. Hudson, and on 3d July, 1877, Benson sold his interest to Hudson and Ewing, to whom the said lands were conveyed by the commissioner named in the decree, on the 15th April, 1878. (R. pp. 203, 204.) These parties, Hudson and Ewing, claim to be the owners of the said property, and are the appellees in this appeal.

But long before the proceedings and transactions aforegoing took place, that is to say on 22d March, 1849, James Dick, uncle of Mrs. Sarah D. Partee departed this life having first made and published his last will in writing whereby he devised and bequeathed to Mrs. Partee and her heirs. first the said plantation "No Mistake" and the personal property thereon, and secondly six thousand acres in Mississippi, entered in his name by H. E. Lawrence and one Breshear. This devise and bequest to Mrs. Partee is made subject to certain conditions "*under the penalty in case of non-compliance of loss of the above property,*" that is to say, first that she shall pay various sums of money to divers parties, who set up no claim in this suit and are not parties to it, and therefore this condition need not be referred to again; and secondly that Mrs. Partee "shall pay to Christopher Todd and Sarah his wife, my sister, $1,000 per annum during the life of either, payable as they or the survivor may require it." (R. p. 226.)

To enforce this second condition, treating the same as constituting *a lien or charge* on the plantation "No Mistake," Christopher Todd, one of the annuitants, filed a bill in the chancery court of Yazoo County, sometime in the latter part of 1867, alleging that a balance was due on the annuity, and praying to have the same decreed to be a charge on "No Mistake." The *only defendants* in this bill were William B. Partee and Sarah D., his wife, albeit the deed of trust by Partee and wife to secure the appellants had been made and recorded as far back as the 19th November, 1866.

Todd, the complainant, died *lite pendite*, and the suit was revived in the name of Edward Drenning, his administrator.

Partee and wife allowed the bill to be taken for confessed against them, and on the 8th June, 1868, the chancellor entered a decree declaring that the said annuity was a charge on the said plantation "No Mistake;" that the amount due the complainant's intestate was $7,680.04, and directing payment thereof within 30 days, or, failing that, that the said land, or so much thereof as might be necessary, should be sold for that purpose. R., pp. 202–3.

Now, the appellees, Benson and Ewing, having misgivings, no doubt, as to their title to "No Mistake," under the decree foreclosing the trust deed from Thomas A. Nelson to Robert H. Short to secure Nelson, Lampher & Co., purchased and took an assignment of the said decree in favour of Drenning, administrator; and on 15th April, 1878, *nearly ten years*

after the decree was entered, procured "No Mistake" to be sold under the decree, became the purchasers thereof at the price of $293.50, and had the same conveyed to them, thinking thereby, no doubt, to draw to themselves the legal title of the said land (R., pp. 203-4), and with it gain a priority over the trust deed to secure the appellants.

In this state of things it became necessary, after the cause went down from this court to enlarge the scope of the suit by filing a bill of supplement, and to make the executor of the deceased, James Stewart, and the administrator of Todd, parties, and accordingly, on the 27th of May, 1879, the appellants, in behalf of themselves and others, filed their bill of "revivor and supplement" against E. Drenning, as executor of James Stewart, deceased, and as administrator of Christopher Todd, deceased, Robert E. Hudson, Joseph P. Benson, and Charles Ewing, individually and as administrator of S. S. Ewing, deceased, and others. R., pp. 132-140.

The bill assails the decree in favor of Drenning, administrator of Christopher Todd, on the following grounds:

(1.) That the annuity or legacy to Todd and wife, was not a charge on "No Mistake."

(2.) If it was a charge "on the wild lands," it could only be demanded by the annuitants in their own life-time.

(3.) That the right to the annuity or any arrearages thereof expired with the lives of the annuitants.

(4.) That the annuity was a personal claim against

Sarah D. Partee, to be enforced by proper proceedings to have the devised estate forfeited for *breach of the condition.*

(5.) That before anything could be payable to said annuitants, it was necessary that the same should have been required by them or the survivor.

(6.) That said annuity only became payable "as required by the said annuitants or the survivor of them and in the sum required," being a conditional and not an absolute annuity.

(7.) That Mrs. Partee paid both annuitants, "all sums required by them or either of them," and on the death of the survivor "no money actually required by him remained in arrears and unpaid."

(8.) That neither appellants nor their trustee Bowman were parties to the said decree enforcing the annuity,

The bill avers that the papers in the suit for the annuity, except the decree, have been lost; that the deed conveying "No Mistake" to Hudson and Ewing was acknowledged 2d December, 1878; but whether the sale was confirmed or not, "your orators do not know, and pray discovery thereof:" That long prior to said sale said Hudson & Ewing had purchased the said decree for a nominal sum and taken an assignment thereof; that the greater part of said decree has here previously paid off by the said Sarah D. Partee & James D. Partee; that the said decree did not specify "any particular lands as constituting the said 'No Mistake' plantation, nor fix a lien upon any designated lands;" that "the suit was not defended

at all and your orators are advised and charge that, as entered, the said decree was not capable of enforcement, and the sale of any particular lands under the same void."

The bill further set up that the defendants, Benson, Ewing and Hudson, had been in possession of the land since the 19th February, 1877, the date of the sale under the decree foreclosing the Nelson trust deed, and had enjoyed the rents, issues and profits to an amount more than equal to what they paid Drenning, administrator for the said decree, and more than was actually due thereon; that the said Drenning decree was barred by the statute of limitations prior to the sale made thereunder, and that the purchasers at said sale had full notice and knowledge of the claim of appellants; but that if the said decree shall be held to be an incumberance on said lands superior to that of complainants, it can only be available as such in this proceeding, "against which the said Benson, Ewing & Hudson must account for the rents and income" received from said lands.

The bill further charges that Sarah D. Partee, as residuary legatee under the will of James Dick, and as one of the heirs-at-law of Christopher Todd, was, at the time of the purchase of said decree by Benson Ewing and Hudson, entitled to one-fifth of the said decree, and that the said Jamas D. Partee was entitled, by purchase, to two-fifths thereof; and the bill claims that the said three-fifths should either be "remitted or charged to them, or credited against rents and profits received by them."

That Sarah D. Partee and James D. Partee have been in the use of said lands or part of them before and since the proceedings in this cause long enough to discharge any claim they might have had under said decree.

The bill prays full discovery, and a decree for an accounting, &c., &c.

Hudson and Ewing answered. (R., pp. 211-221.)

Omitting such parts of the answer as have no bearing on the questions arising on this appeal, the said respondent say that if the Stewart judgment is invalid, the purchasers under it are entitled to be reimbursed. They admit the purchase of Lake Dick by Stewart, and of "No Mistake" and "Tyrone" by James D. Partee.

They say that, at the time, the original bill was filed, Thomas A. Nelson was a non-resident, and that service could not be made on him, and that the trust deed to secure $35,000 was executed before any service was made on him or before he had notice of complainant's claim, and submit the question whether Nelson is affected by this suit.

Admit the foreclosure proceedings by Benson and others in the Chancery Court of Yazoo County, and the purchase by them of the lands in question; but deny positively any knowledge whatever of complainant's claim at the time of their purchase—the 19th February, 1877; that no one appeared at the sale to make claim in behalf of complainants, and that it was not until the sale under the decree in fa-

vor of Drenning, administrator of Christopher Todd, in April, 1878, that any one did so appear and set up a claim for complainants.

They admit that Complainants were not parties to the Benson foreclosure suit.

That respondents and Benson paid $9,391.23, and $110.00 costs for the Drenning decree, of which Benson paid $2,500, Ewing $3,550.62½, and Hudson the balance of $3,450.60, including costs. That said decree was assigned to respondents and Benson by order of the Chancery Court of Yazoo County. That the purchase money was paid to Drenning, administrator, by Hudson.

That the total gross receipts for the rent of said property for 1877 were about $2,100, and for 1878 about $2,700, and will be about $2,500 for 1879; that respondents have had to pay a manager to look after and collect the rents and expend considerable money in relation thereto; and that the reasonable rental value of the property was $1,000 in 1877, $1,500 in 1878, and the same in 1879. States various sums paid for taxes, and insists that a tax title to the property held by them is valid.

They deny liability for any rents until they were made parties to this suit, "and, anyhow, until they had actual notice of this suit, and then only for the reasonable rental value of said property."

They insist that the annuity to Todd and wife was a charge on "No Mistake;" they deny the averment that Todd made no demand or request to pay the annuity, even if such demand were necessary to pre-

serve the charge, which they do not admit. They say that Todd made repeated demands; that the decree enforcing the charge describes the land as "No Mistake," the name by which it was devised, by which it was well known; that it was known to include the place called "Tyrone," at the date of the will, and that the land described by the two names passed to Mrs. Partee by the will under the name "No Mistake;" that the commissioners sold, under the name of "No Mistake," all the land called "Tyrone."

That although the deed of trust to secure complainants was executed before the 18th November, 1867, the date of the filing of the bill by Christopher Todd, it is not to be presumed that it was accepted by the creditors, seeing that it "imposed onerous conditions" on them; that said Todd had no notice of any and did not suppose there was any operative conveyance of the said land when he filed his bill.

That the decree in favour of Drenning, administrator, was suffered to stand unexecuted out of indulgence to Mrs. Partee; and afterwards, in obedience to an injunction at the suit of James D. Partee, restraining the execution of said decree; and that said injunction was not dissolved until 12th January, 1877, during which time the statute of limitations ceased to run against said decree (*vide* transcript of record in the injunction suits, R. pp. 233-248); that all persons dealing with the said property took the same subject to the said bill, which was duly probated and recorded; that neither the trustee of the deed to secure complainants nor any creditor had ever been in pos-

session of said land claiming adversely to the said charge.

That if the title acquired by respondents under this decree is not valid they are entitled to be reimbursed as to the amount paid by them for the said decree.

That they purchased in good faith, and went into possession in the belief that they had a good title; that they have enhanced the value of said property by "permanent, valuable and ornamental improvements;" that respondents are entitled to compensation for the permanent and valuable improvements up to the time they were served with notice in this case, or, at least, up to the time they were notified by complainants at the sale under the Todd decree; that respondents estimate their improvements, which are valuable and permanent, and not ornamental, at $10,000.00.

The answer is sworn to by the respondent, Hudson, only. (R., p. 221.)

To this answer a replication was duly filed. (R., p. 273.)

Drenning, in his quality of executor of James Stewart, and administrator of Christopher Todd also, answered, (R., pp. 249–252,) but, as his answer has no bearing on any of the questions arising on this appeal, saving in so far as it states that the delay in enforcing the Todd decree was owing to indulgences granted and to an injunction; that the lands were sufficiently designated as "No Mistake;" that the said decree was not bound by limitations.

The answers of Hudson & Ewing and Drenning,

executors, &c., were excepted to on the grounds of impertinency and irrelevancy. (R,, pp. 266–8.)

On the 20th November, 1879, the court entered an order sustaining the exceptions to the answer of Drenning, declaring that Hudson & Ewing were not estopped as to the proceedings under the original bill, but entitled to be made parties to it and to answer the same, and making them parties and declaring that their answer to the bill of supplement should stand as their answer to the original bill, "in so far as the lands purchased under the said trust deed executed by said Nelson are concerned," and that the exceptions to so much of the said answer as relates to the said land be overruled ; that Thomas A. Nelson, having answered and defended said suit, the evidence theretofore taken should be competent against Hudson and Ewing, saving to them the right to cross-examine any witnesses heretofore examined by complainants (R., pp. 268-270). The said decree embraced other matters, which, being immaterial to the case as now presented, need not be specified.

The cause was referred to James H. McKee, as commissioner, to state an account of what was due the complainants (R., p. 270), which statement was duly made (R., 272).

On the 24th November, 1879, the court entered an order reviving the suit as to Drenning, as executor of James Stewart, deceased, and separating the controversy in ihis suit between complainants and Hudson & Ewing and Drenning, as administrator of Todd, in which was involved only the plantations "No Mis-

take" and "Tyrone," from the other matters involved in said suit, to be proceeded in as if an independent suit. The other matters mentioned in said decree have no bearing on the questions raised on this appeal.

As touching the question as to whether the appellees were purchasers *lite pendente*, it is proper to state that Thomas A. Nelson, who was a defendant in the original bill, was non-resident in Mississippi, and consequently not served with process, but appeared by counsel on the 30th January, 1874 (R., p. 93, and answered the bill on the 11th February, 1874 (R., p. 93).

There was a replication to the answer of Hudson and Ewing. (R., p. 273.)

On the 29th November, 1880, the court entered an interlocutory decree, determining the principles governing the cause, that is to say, that the Stewart judgment and the title of Hudson and Ewing derived therefrom were null and void; that the tax title of Benson and Ewing was null and void; that the complainants had the right to redeem the land in question from the title of Hudson and Ewing derived from the Drenning decree; that Hudson and Ewing were entitled to be repaid the whole amount paid by them for taxes and for the Drenning decree; that Hudson and Ewing were entitled to compensation for permanent inprovements *and repairs*, but were responsible for a *reasonable sum* annually, for the use and occupation of said land up to 1st January, 1880, and entitled to a prior lien for any balance due them, and

that any balance due by them should be deducted from the amount of the Drenning decree; that the notes and deed of trust executed by Sarah D. Partee are valid obligations, and that N. H. Luse be substituted as trustee for Bowman, deceased. The decree then refers the cause to commissioners, to state the proper amounts and, amongst other things, "*the fair rental* value" of "No Mistake" and "Tyrone" during the time the appellees occupied or leased the same, with interest from the time such sums would usully become payable; the decree directs interest on such repairs as added to the rental value, but not on the value of permanent improvements, and that in estimating the fair rental value, inquiry should be made as to what the lands would have brought in money if leased to a solvent lessee on the usual terms, "without reference to any system of underletting," with, as well as without, the improvements.

On 24th November, 1881, the commissioners filed their report (R., p. 282,) to which the complainants duly excepted. (R., p. 285.)

On 17th February, 1882, the court, laying out of view the commissioners' report, filed an opinion to take the place of said report. (R., p. 289.)

On 17th February, 1882, Commissioner McKee reported the amounts due the complainants, respectively. (R., pp. 293, 295.)

On the 18th February, 1882, the court entered a final decree for the sale of the land, embodying the principles laid down in the interlocutory decree of the 29th November, 1880. (R., p. 296.)

Argument.

Several important points may be postulated in this discussion, namely:

1. That the judgment of James Stewart against Sarah D. Partee is null and void.

2. That the tax sales under which the appellees claimed title are null and void.

3. That the title derived by the appellees from the sale under the decree in favor of Drenning, administrator of Todd, was not absolute, but redeemable by complainants.

4. That the indebtment of Sarah D. Partee, to appellants, and the deed of trust securing it, are valid and binding.

These points are expressly adjudged by the decree of the court below, and there is no cross-appeal drawing them into question.

The questions relating to improvements, *mesne* profits, and the effect of the State act of limitations on the decree in favor of Drenning, administrator of Todd, have been sufficiently discussed in the brief filed by Mr. Nugent.

The complainants, in their supplemental bill, (R., p. 138,) charge and aver that the legacy to Todd and wife in the will of James Dick, deceased, was not a charge on "No Mistake" plantation, and that the same "constituted only a personal claim against the said Sarah D. Partee, to be enforced by proper proceedings to have the estate devised forfeited, because

of a breach of the conditions attached thereto, and to the enjoyment thereof by the said will."

Are these positions well founded? for, if they are, the decree of the court below enforcing the Todd legacy as a lien on the land, in controversy, is, necessarily, erroneous.

James Dick, by his will (R., p. 226) makes the following devises to his niece Sarah D. Partee:

"To my niece, Sarah D. Todd, wife of William B. Partee, of New Orleans, and to her heirs, I give and bequeath—1st, my plantation commonly called "No Mistake" plantation, near Satartia, Yazoo County, State of Mississippi, with all the negroes, horses mules, cattle, buildings, and farming utensils that may be found on said estate at the time of my death and belonging to me.

"2nd. I give and bequeath to said Sarah D. Todd and to her heirs about six thousand acres of land situated in this State, [the will was made in Louisiana] and entered by H. E. Lawrence and Brashear in my name. This bequest is made to Sarah D. Todd, wife of said William B. Partee, upon the following conditions, under the penalty, in case of non-compliance, of loss of the above property: The first of said conditions is that Sarah D. Todd, wife of said William B. Partee, shall, within the next ensuing month after my death, pay, etc., legacies of $12,000.00 cash to Elizabeth Nathaniel and Christopher Calhoun. The second of said conditions is that the said Sarah D. Todd and her heirs shall pay to Christopher Todd and Sarah his wife, my sister, $1,000.00 per annum during the life of either, payable as they or the survivor may require it."

It is impossible to see by what process of reasoning the learned court below reached the conclusion that the effect of the will was to make the legacies a charge on the lands devised. It would seem that the testator has made one will, and the court by its decree another.

The language employed by the testator is apt and proper to create conditions; indeed, it is the time honored technical phraseology used for that purpose. It is "this bequest is made to Sarah D. Todd, wife of William B. Partee, upon the *following conditions under the penalty*, in case of non-compliance, *of loss of the above property*. The first of said conditions is, &c., &c. The second of said conditions is," &c., &c.

It will be observed that the language used is entirely repugnant to an intention to create a lien or charge, because, in case of the devisees' failure to pay the legacies or any of them, she is to incur the *penalty* of *loss* of the property, showing that the testator had it in view that, in case of such default, his heir should by entry destroy the estate of the devisee and resume the seizin of his ancestor. The language admits of no other construction.

If the testator's purpose had been to create a lien merely, it would not have occurred to him to provide for a *forfeiture*, seeing that the object in view would be fully accomplished by taking from the devisee enough to satisfy the lien and leaving what remained to be enjoyed by her.

At the time the will was made the plantation in Yazoo County was of great value, and the testator could not have had a doubt that these conditions, held over the devisee, *in terrorem*, were absolute security for the payment of the legacies. And this is a circumstance to which we may well look when inquiring into the testator's intention. The instrumentality employed by him was, at the time, entirely adequate to

compass the object he had in contemplation. But now that the instrumentality has become inadequate, can a court, looking at what has occured *ex post facto*, attribute a different intention to the testator? It is nothing short of that very thing that the court below has done in decreeing the Todd legacy to be a *lien* on the land.

So plain and unmistakable is the intention of the testator, that argument upon it rather tends to darken than elucidate.

The words of the will, importing a condition, as they do, it follows necessarily that it was not for the legatees but the heirs of the testator to enforce that condition by entering upon the land devised in the name of the condition. The law on this subject is too well established to require reference to authority.

But it is said that these clear and emphatic words of the will are overruled and controlled by the following language, near the close of the will,—"that all the legacies which I have given in money and not charged upon any particular fund is [sic] not demandable from any person whomsoever for the term of two years after my decease," &c., &c.

It is contended that as the testator has referred to some legacies as "*charged*" upon a particular "*fund*," he must have meant those which Mrs. Partee was to pay, as there are none others answering to the description. But are the legacies last mentioned, if charged on anything, charged on a *fund?* Supposing, however, the testator did have those legacies in view when he used the words in question, is it not

plain that his meaning was that he had given Mrs. Partee the means to pay those legacies, and had taken the proper precaution, as he thought, to insure the carrying out of his intention? Surely the use of the word "charged" in the above context can not have the effect of overruling and defeating the undoubted purpose to create conditions in a preceding part of the will. Before such a result would be allowed, it would be held that the word "charged" had been used in some sense other than its technical or primary sense.

But if the language of the will should be held to create a lien or charge, it is only a lien or charge on the 6000 acres of land mentioned in the 2d sub-clause. The 1st and 2d sub-clauses are distinct, and it would seem that the words "above property," as indicating the subject on which the penalty should operate, should be referred to the 6000 acres only.

It is respectfully submitted that the decree must be reversed.

WM. A. MAURY,
W. HALLETT PHILLIPS,
for Appellants.

OFFICE SUPREME COURT U. S.
FILED
SEP 24 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1883.

No. 628.

THE CANAL BANK, THE CRESENT CITY BANK, THE UNION BANK, THE LOUISIANA STATE BANK, I. MARSH DENMAN, E. DUPASSEUR & CO., A. BIDAULT AND H. W. CONNER & SON, Appellants,

vs.

ROBERT G. HUDSON AND C. C. EWING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

Argument of Wm. L. Nugent, for Appellants.

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Argument of Wm. L. Nugent, for Appellants.

This cause was here before and is found reported in 99 U. S., page 325. At that time Hudson and Ewing, appelles, were not parties to the bill, but it is insisted that they stand in no better predicament than Thomas A. Nelson, under whom they claim, and who was a defendant to our original bill. As this and other questions are brought up for settlement on the present appeal, it is proper to outline our case as succinctly as possible so that this court may the more readily apprehend them.

On the 19th of November, 1865, the trust deed in favor of Mrs. Partee's creditors, was executed and recorded; it was accepted; and was sustained by this court, after careful examination, against the title derived by the former and the present defendants to the cause, under the Stewart judgment. The court below held to that decision and it is not now controverted, that our trust deed is a perfectly valid security for the payment of our debts. At the sale under said judgment, Stewart and James D. Partee, son of Mrs. Partee, purchased the several plantations included in the trust deed, and known as "Seven Gums," "Lake Dick," "No Mistake" and "Tyrone." "Seven Gums" was sold under a lien prior to ours and is not in contro-

versy; "Lake Dick" is now the property of the creditors, having been sold and purchased under a decree in their favor. The remaining two plantations are in litigation between the parties now before the court—the appellants claiming that they hold a lien, subordinate only to the Todd legacy, impressed on the lands by the will of Mrs. Partee's testator, if that be an existing lien, and that this latter lien, if not barred by limitation, has been partially, at least, and, perhaps, wholly paid off by rents and profits realized by appellees. No question of title is involved. Appellees were not parties to the various proceedings for foreclosure of liens and mortgages in Yazoo county, nor were Hudson & Ewing parties to their original bill.

The questions in the cause arise upon the issue as to the statute of limitations as applicable to the Todd legacy or the decree on account of the same, in favor of E. Drenning, administrator of Christopher Todd, deceased, *vs.* Wm. B. Partee and Sarah D. Partee, his wife, rendered by the chancery court of Yazoo county, on the 8th day of June, 1868; and the proper rule for the adjustment of the equities of the parties under their respective liens. P. R. 223 to 233.

To the original bill, Thomas A. Nelson was a party defendant. He purchased the "No Mistake" and "Tyrone" plantations from James D. Partee in 1872; Partee was a purchaser under the Stewart judgment, which has been adjudged by this court and the court below, in the present controversy, to be void. 99 U. S., 229, *et seq.* On the *15th April, 1873*, after the filing of our original bill and issuance of subpœna thereon, Nelson gave trust deed conveying the plantations in controversy to one Short to secure a debt of $35,000 due Nelson, Lamphier & Co., represented by a large number of notes. Benson, Ewing and others, who had become owners of some of these notes, all of which were payable in New Orleans, Louisiana, on the *1st August, 1876*, exhibited their bill in the chancery court of Yazoo county against Nelson, Lamphier and others, for a foreclosure of said trust deed, and *did not make appellants parties.* Such proceedings were had that, on the *10th day of January, 1877*, a final decree was entered in the cause appointing H. L. Taylor special commissioner to execute the trust in Nelson's deed and sell the plantations. This decree was executed, and the sale made on the *19th February, 1877*, and Benson, Ewing & Hudson, on that day, became purchasers. A deed was then made by Taylor, commissioner, to them and they were put in possession of the plantations called "No Mistake" and "Tyrone." The commissioner's report of sale was confirmed *April 18, 1877*. P. R. 154 to 189.

On the *3d July, 1877*, Benson conveyed his interest in the plantations to Robert G. Hudson. P. R. 197. The plantations had originally been the property of James Dick, though they constituted, at the time of his death, but one, called "No Mis-

take." Dick devised the property to his niece, Sarah D. Partee charged with an annuity in favor of Christopher Todd and wife. Arrearages of this annuity having accrued during the late war, Christopher Todd, on the *18th November, 1867*, exhibited his bill in the chancery court of Yazoo county for collection of the same, against William B. and Sarah D. Partee, and on the *8th June, 1868*, his administrator, Edward Drenning, obtained a decree charging said arrearages upon the lands constituting said plantations, and directing a sale thereof for their payment. P. R. 224–233.

Under this last named decree, and after James D. Partee's injunction was dissolved, the property in controversy was sold on the *15th April, 1878*, and purchased by the appellees, who were then actually notified of our suit. The commissioner, H. L. Taylor, made report of his sale, and the same was confirmed on the *25th March, 1879*. P. R., 232; Id., 220, *Mss*, 403.

The court below fixed the date of the *purchase* by Hudson & Ewing of the Todd legacy decree at *February 5, 1877*, and held that they were entitled to be reimbursed the sum paid out on account of the purchase, with interest and costs. P. R. 279, paragraph 5 of decree.

It will be noted that appellees purchased the Todd legacy decree *fourteen days before* their purchase of the lands in controversy under the decree in the Benson case, and did not have the decree executed until *April 15th, 1878*, or the sale under the same *confirmed until March 25th, 1879*. They went into possession under the Nelson mortgage foreclosure decree and sale, and as the appellees are affected with the pendency of our original bill only through Nelson, if at all, a statement of the precise dates is here proper. The original bill against Nelson and others was filed and subpœna issued *April 1st, 1873*. Nelson's appearance was entered, (93) *January 30, 1874;* Nelson's mortgage is dated, (159) *April 15th, 1873;* Nelson was a non-resident of the state; the original subpœna issued was not executed; another *alias* was issued and partially executed about *July 8th, 1873*. P. R. 80, 81, 64. Robert Bowman answered *April 30, 1873*. P. R. 64.

The supplemental bill sets forth all the necessary facts, but it is supposed that those presented above are sufficient to raise the issues in the cause; except those apparent upon the face of the decrees and the offset against the Todd legacy decree, which we now state.

In the decree rendered *November 20th 1879*, the court, overruling exceptions taken to the answer of appellees, held "that Hudson & Ewing, claiming title to a portion of the property in controversy under a trust deed executed by Thomas A. Nelson, one of the defendants to the original bill in this cause, on the 15th April, 1873, prior to any process, publication or appearance in the cause by said Nelson, are not estopped as to said property by the *lis pendens*, or the proceedings heretofore had

in the cause, from answering the original bill, but, on the contrary, that they are proper parties defendant to the said original bill, as having a substantial interest in the original controversy." P. R. 269, paragraphs 2 and 3 of decree.

And in the decree rendered *November 29th 1880*, the court below held as follows: "5. That the defendants Robert G. Hudson and Charles C. Ewing, the parties now in possession of the lands in controversy, and claiming the same, are entitled to be reimbursed the full amount paid by them, or either of them to E. Drenning, administrator of Christopher Todd, deceased, in the purchase of the legacy decree, obtained by said Drenning against the said William B. and Sarah D. Partee, in the chancery court of Yazoo county, on the 8th day of June, 1868, with interest thereon from the date of payment, at the rate of six per cent. per annum, and the sums paid by them for costs in said cause and interest, and that the sum paid in the purchase of said decree is hereby fixed at $6,391.23, and the date of payment at *February 5th, 1877;* and that for this sum and interest thereon as aforesaid, and the sums paid for costs in said cause and interest thereon, the said defendants are entitled to, and hold, a paramount lien upon the lands now in controversy."

"6. That the said Hudson and Ewing are entitled to be reimbursed the amounts paid out by them for taxes upon the said lands now in controversy, and the value of all improvements of a permanent character put upon said lands by them, and repairs, but are responsible for reasonable sum annually for the use and occupation of said lands during their term of occupancy and up to January 1st, 1881; and that for the balance, if any, due them upon the accounting hereafter to be taken, they shall have a lien upon the said lands superior to that of the complainants; and that the balance, if any, due by them shall be deducted from the amount due them on account of the Todd legacy."

* * * * * * * * *

"9. That for the purpose of taking the account of rent, taxes and improvements, and the amount due said Hudson and Ewing, the papers in this cause be, and they are hereby, referred to N. T. Pugh and S. W. Swayze, as special commissioners, who will take and state an account of the amount due to said Hudson and Ewing on account of the Todd legacy, decree and costs, and interest on said decree and costs and taxes paid by Hudson, Ewing & Benson, or Hudson & Ewing, upon the said lands, and interest on the sums paid from the day of payment, at six per cent. per annum; of the fair rental value of the said "No Mistake" and "Tyrone" plantations for the several years during which the said Hudson & Ewing, or Benson, Hudson & Ewing, have occupied and cultivated or leased the same, and interest on the sums so ascertained from the time they would usually become due and payable, and of the improvements and repairs

put upon said plantations by the said Hudson & Ewing, or Benson, Hudson & Ewing, and interest on the value of such portions thereof from the time of payment or making said repairs and improvements as may have directly contributed to the enhanced value of said plantations. That in estimating the fair rental value of said plantations the said commissioners shall inquire what they would have brought in money if leased together or separately to a solvent lessee, or lessees, on the usual or customary terms of leasing such plantations as entire plantations, or an entire, plantation without reference to any system of underletting pursued by said Hudson and Ewing and Benson, or either of them, during each of the years they were occupied or claimed or held by said parties, or either of them, with, as well as without, the improvements claimed for by said Hudson & Ewing; and shall determine the the said rental value from the proof so taken as well as that heretofore filed in the cause, and allow interest on the sums found due at six per cent. per annum from the time the same would usually have become due and payable.

"That for all improvements and repairs which directly contributed to enhance the rental value of the plantations the commissioners shall allow the original fair cash value and interest from the date at which they were made or finished, at six per cent. per annum, and for all other improvements which enhanced the permanent value of said plantations, their actual value at the time the account may be taken by them, * * * *" P. R. 279. 280

The opinion of the court on the exceptions to the commissioners' report, with schedules attached, constitutes and presents all the findings of fact necessary to a consideration of the matters of account respecting the rents and improvements claimed by appellees. P. R. 289, to 263 inclusive.

The exceptions to the answer of Hudson & Ewing, P. R. 266, can be fully understood by the written stipulations filed in the cause and printed with this argument. These exceptions were taken to bring up for decision the estoppel upon appellees to litigate the case or claim improvements created, as was supposed, by the pending suit against their grantor Thos. A. Nelson.

It is proper, also, to call attention to the Todd legacy that figures in the case. James Dick being seized of the land in controversy at his death, devised the same to Mrs. Partee charged with an annuity in favor of her uncle, Christopher Todd, of $1,000. Todd brought bill to charge the arrearages of this annuity accumulated during the war, upon the lands, and died intestate, leaving five heirs at law, of whom Mrs. Partee was one. He owed no debts. Mrs. Partee did not defend the suit and suffered a decree to go against her for the amount claimed. She was interested to the extent of one-fifth in the decree, as well as one-fifth of the Tennessee estate of Todd.

James B. Partee, after his purchase, brought bill to enjoin execution of the Todd decree, rendered June, 1868, and obtained injunction July 18, 1870. He gave two injunction bonds in the penalty of $4,000 each, and on June 8, 1871, entered into an agreement with Todd's administrator by paying $2,000 on the decree, whereby the execution of the decree was suspended until the determination of a suit in Tennessee, involving the rightful distributees of Todd's estate, and on the 12th of February, 1877, the injunction was dissolved by consent. The object of Partee's bill was to offset against the decree the interest of his mother in the same and the balance of the Todd estate. He claimed, as we claim, that this should be done, and only the balance due thereon charged against the lands in controversy. P. R. 224 to 249; Id. 139, 140.

The errors we assign, therefore, are these:

1.

The court erred in holding that the appellees were not *estopped* to claim improvements and repairs after suit brought, and Nelson's appearance entered, by the proceedings and decree in the cause against him. P. R. 269, part 2, decree.

2.

The court erred in allowing appellees the amount of the Todd legacy decree as a paramount lien, and in not holding that the said decree and lien were barred by the statute of limitations as charged in complainant's supplemental bill and prayed by them, and that it had ceased to be a lien upon the property in controversy as to appellants. P. R. 279, part 5 of decree.

3.

The court erred in allowing appellees a recovery of the value of the improvements and repairs claimed, for the following reasons: *a.* This case was a pending suit as to them at the time the improvements were made; *b.* they had notice of our trust deed which had been recorded; *c.* the demand was unconscionable; *d.* they were actually notified of the pendency of our suit on the 15th of April, 1878; *e.* and subpœna under our supplemental bill was executed upon them on the 30th of June, 1879. P. R. 279, part 6, decree; Id. 220, Mss. 403; Id. 132, 205, 206.

4.

The court erred, even if there were no estoppel, in the rules adopted for the account of rents and profits and improvements and repairs. Appellees should have been charged with the

rents actually collected, or which, with reasonable diligence, could have been collected, and allowed for all necessary improvements and repairs to be ascertained at the taking of the account. Interest should not have been allowed on the original cash value of the improvements. Appellants should not thus have been compelled to buy improvements injured by decay and lapse of time, at original cost and interest. The cost of improvements made after notice of suit and filing of our supplemental bill should have been excluded. P. R. 279, 280, parts 6 and 9, decree; Id. 220, 403; Id. 205, 206.

5.

The court erred in the rule adopted as to the rent with which appellees were chargeable. It is not true, as matter of law or equity, that the mortgagees in possession were only chargeable "with the fair rental value of said plantations * * * at what they would have brought if leased to a solvent lessees * * * on the usual terms * * * as entire plantations * * *" without reference to the amounts of money really received by them for rents and profits. P. R. 280, part 9, decree.

6.

The court erred in not abating the Todd legacy decree, after sustaining it as a charge upon the lands, to the extent of Mrs. Partee's interest in it, as one of the heirs at law of Christopher Todd, deceased, as well as her interest in the Todd estate in Tennessee. It was not proper, as against appellants, that the whole of this decree should be collected and in part paid to our mortgagees, and that her interest in the Tennessee Todd estate should also be paid to her. Especially is this the case since the decree against Mrs. Partee was taken by default, and we were not parties to it. Todd's local administrator had claims for arrearages of annuity against her and she was entitled to one-fifth of Todd's entire estate. P. R. 139, 140, 218.

7.

The court erred in rendering a decree in favor of Hudson & Ewing for $20 242.83, and in requiring appellants to pay $6,309.60, the excess of improvements over rents and profits. On the pleadings and law of the case there should have been a decree in favor of appellants alone. P. R. 296, 297.

1.

Was the cause *lis pendens* as to Hudson & Ewing prior to the filing of the supplemental bill so as to cut off his claim for improvements and repairs, or affect it in any way? We think

it was. It is true that the doctrine of *lis pendens* does not apply to negotiable paper except where it is *in custodia legis*. That question is not involved here; the lands constitute a security to which the parties are respectively looking for payment of a debt represented by *negotiable* paper, about which there is no contest. In Mississippi the rule as against a *stranger* purchasing property in litigation pending the suit is, that there must be the issuance and service of a subpœna; as to the defendant the issuance of the *subpœna* is sufficient.

Bacon v. Gardner, 23 Miss., 60;
Allen v. Poole, 54 Miss., 323.

There was, therefore, a *pending suit* as to Nelson on the *first of April, 1873*, when our bill was filed, and then *subpœna* actually issued. How does this affect the appellees? The rule is well settled that if a person *purchase an estate* pending a suit involving a question of title to it, he will be considered a purchaser with notice, although he was not a party to the suit; that a bill to foreclose a mortgage on the premises is a suit involving the title within this rule, and that the *lis pendens* continues until the final disposition of the suit.

Newland on Contracts, 506;
Sugden on Vendors, 281, 285;
Chaudron v. Magee, 8 Ala., 570.

It is important to notice the fact that when our original bill was filed and *subpœna* issued, Thomas A. Nelson was the only adverse owner or claimant of the lands so far as the records disclosed; our trust deed had been duly recorded; Nelson's mortgage was not executed until the *15th April, 1873;* and his appearance was entered in the cause on the *30th January, 1874*. P. R. 1, 64, 93, 159. The trust deed of Nelson was executed after our bill was filed and *subpœna* issued against him; and while he did not directly convey to appellees, they hold under the trust deed to Short and occupy no better position.

Newman v. Chapman, 15 Am. Dec., 775;
Bailey v. McGinness, 57 Mo., 362;
Majors v. Cowell, 51 Cal., 484;
Miller, v. Sherry, 2 Wall., 250;
Code of Mississippi, 1871, §§ 2304, 2305.

There was, therefore, notice, 1, by the registration of our mortgage, 2, by the suit for a foreclosure begun in the court below on the *1st April, 1873*, 3, actual notice in fact communicated to Hudson by A. M. Harlow on the *15th April, 1878*, when he and Ewing purchased the lands under the Todd legacy decree; and 4, service of subpœna under supplemental bill, June 30, 1879. P. R. 220; Mss. 403; Id. 205, 206.

We are not concerned with this matter except as to the question of rents, profits and improvements, for the reason that, at the hearing and upon the proofs, the Stewart judgment was held to be void, the execution title in favor of James D. Partee annulled, and our trust deed fully upheld. The fact of notice

is very material as it respects the recovery of rents and the statement of the account. Certainly appellees were not entitled to recover for improvements erected after *April 15, 1878*, when they were actually notified of the pendency of our suit. Otherwise they could very well, as they did here, improve us out of our estate. We, therefore, insist that the appellees occupy no better position than did Nelson; and as he could not have improved the property at pleasure to our detriment, no more could Hudson and Ewing; and as their improvements were almost wholly made after the giving of this *actual* notice they should not have been allowed for them at all. P. R. 192, 293.

But there is another consideration which makes this view quite apparent. In Mississippi, the mortgagee or trustee is not regarded as the owner of property mortgaged; the deed is a mere security. The language of our Code is as follows: "* * * * * The mortgagor or grantor shall be deemed the owner of the legal title of the property conveyed in such mortgage or deed of trust, except as against the mortgagee or his assigns, or the trustee, after breach of the condition of such mortgage or deed of trust."

Code of Mississippi, 1857, p. 308, Art. 12;
Code of Mississippi, 1871, § 2295;
Code of Mississippi, 1880, § 1204;
Helm v. Gray, 59 Miss., 59, *et seq.*

When our bill was filed Nelson was owner, and his mortgage was not executed until fourteen days after the issuance of the subpœna against him. It would not have been possible to anticipate this transaction, and was not necessary and was quite impossible to make the junior incumbrances parties afterwards, because they could not be ascertained. The condition of our trust deed had been broken and we had the right to recover the property as a means of securing the payment of our debt, and the party in possession of and claiming the land was a party defendant. He had the legal title when we sued out process of *subpœna* and, as to us, was the owner at the time his appearance was entered. It would seem, therefore, that all persons claiming by, through or under him had notice, or were bound by the litigation so far as to make them stand in the shoes of Nelson, in respect to the claim for improvements. What Nelson, had he retained and improved the lands *pendente lite* without our consent, could have claimed, they could and no more. Else this singular result would follow, that the appellants in the effort to reach and utilize securities could be virtually deprived of them against their consent on the idea that they were to be benefited. We do not well see how this could possibly happen.

Hards v. Con. Mut. L. I. Co., 8 Biss. C. C., 234;
Drake v. Crowell, 40 N. J. L., 58;
Carrington v. Brents, 1 McLean, 167.

The Todd legacy and decree were not existing liens as against appellants and should not have been allowed in favor of Hudson and Ewing. They purchased this decree on the *5th February, 1877*, and had the property sold under it on the *15th April, 1878*. On the *18th July, 1870*, James D. Partee sued out an injunction restraining the execution of said decree, which was finally dissolved by agreement *October 28th, 1876*. P. R. 233, 248. Prior to this time, on the *19th April, 1871*, Partee paid $2,000 on the decree and the sale under it was suspended until the determination of a suit in Tennessee touching the administration of Todd's estate. P. R. 247. Partee had purchased the property in controversy under the Stewart judgment and, claiming an abatement of the decree, sued out the injunction. The question, therefore, is whether the pendency of this proceeding arrested the running of the statute of limitations *as to the appellants*. If it did not, the decree was barred; if it did, the decree is not barred by limitations. If the claim as to us is barred, the appellees will be remitted to the injunction bond for relief.

It is conceded that James D. Partee could not plead the statute of limitations against the enforcement of the Todd legacy decree, because he had prevented such execution by suing out and insisting upon an injunction against the creditor. It would shock conscience to hold the reverse; but he is not endeavoring to plead the statute. The *appellants*, who had no connection with the suit in any way, who were never impleaded, but who ought to have been, are relying upon the bar. As to them it is perfectly proper, legal and just. The amount of the decree was $7,680.04, James D. Partee paid $2,000 towards its discharge, and the balance about equalled the value of Mrs. Partee's interest in the estate of Christopher Todd. James D. Partee had no title whatever to the property as has been adjudged, and, as soon as he lost his supposed title under his mortgage to Nelson, Lamphier & Co., consented to a dissolution of his injunction. Mrs. Partee collected from Hudson & Ewing her part of the decree and secured to herself all her interest in the other estate of Christopher Todd, to our prejudice. We endeavored to prevent the consummation by our supplemental bill but failed. P. R. 139, 140, 233, 234, 235.

The statute declares that "no judgment or decree rendered in any court held within this State, shall be a lien on the property of the defendant therein, for a longer period than seven years from the rendition thereof, but the time during which the execution of such judgment or decree shall be stayed or enjoined by *supersedeas*, injunction, or other process, shall not be computed as any part of the said period of seven years." Code 1857, p. 401, Art. 15; Code 1880, § 2680.

But can it be said that all the world is bound or estopped by

the act of a party not connected with the decree in any way—a perfect stranger to the record and having no interest or title in the property sought to be sold? Is it true that the decree *can* continue indefinitely a debt as against the debtor by the act of a stranger to the record? or against one not connected with the suit?

The creditor could at any time have brought his bill against appellants and prosecuted the same to final decree and sale. There was no impediment in his way. He chose to pursue Mrs. Partee alone, disregarding the existence and validity of our trust deed, and had his claim reduced to a decree against her. "A transaction between two parties ought not to operate to the disadvantage of a third," is the maxim of the law. A person, therefore, cannot be *affected*, still less concluded, by any decree or judgment to which he was not actually, or, in consideration of law, privy. Broom's Legal Maxims, * 917. If we are not *affected* by the decree, how could we be affected by the suing out of an injunction on the part of James D. Partee? or how could Mrs. Partee be affected? It is quite true that the decree against her as to the amount of the arrearages of annuity due might be *prima facie* good against appellants in fixing the sum chargeable on the lands, but a sale under it would not have cut off our rights as junior encumbrances. That is clear. The decree and sale would prove fruitless.

Recurring now to the statute quoted, it is clear that it was intended to include only the parties to the suit or those in privity with them. The injunction, *supersedeas*, or other process must have been sued out by the defendant or judgment debtor to arrest the running of the Statute. Read in connection with the preceding sections of the Code of Mississippi this is apparent. Mrs. Partee had the right to plead the statute of limitations and so do we. Had *she* enjoined the execution of the decree her action would have been binding on us so far only as to keep the debt alive and preserve the lien. As she did not enjoin the execution of the decree the complainant assumed all the consequences resulting from the delay. Indeed, the sale under the decree was suspended on *8th June, 1871*, by his own *agreement* in consideration of $2,000 paid him by James D. Partee. P. R. 247. It is quite evident that the statute does not extend to such a case. Todd's administrator could have had the injunction dissolved at any moment; there was nothing after answer filed, to warrant its continuance; indeed nothing to justify it in the first instance. There was no semblance of equity on the face of the bill. P. R. 233 to 237.

If we are correct in our first position, the decree was barred by limitation; if not, but correct in the last view, the same result follows as shown by the dates:

	yr.	mo.	day.
Decree rendered	1868	6	8
Injunction issued	1870	7	18
Time elapsed	2 yrs.,	1 mo.,	10 ds.

	yr.	mo.	day.
Agreement to suspend decree.	1871	4	19
Purchase of decree by Hudson	1877	2	5
Time elapsed	5 yrs.,	9 mos.,	16 ds.
Add above	2 "	1 "	10 "
Total time elapsed	7 yrs.,	10 mos.,	26 ds.

The land, however, was not actually purchased by Hudson & Ewing until *February 19, 1877*, nor the Todd legacy enforced until *Apil* 15, 1878, so that the decree was more than barred by limitation when it was sought to be executed. It surely can not be contended that the *suspension* of the decree by agreement for a consideration paid by James D. Partee, and the dissolution of the injunction by consent on the 12th January, 1877, could have the effect of arresting the act of limitations in favor of appellees. P. R. 247, 248. This was not a case falling within the spirit or letter of the exception provided by law. We were not in privity with James D. Partee, nor was his mother. We, hence, conclude that the Todd legacy decree was barred when Hudson & Ewing purchased it, and almost doubly barred when our supplemental bill was filed. He had bought this decree *long before he claimed or asserted any title to the lands. His is not the case of a party in possession buying upon a senior encumbrance for his protection*, and he is not entitled to any consideration in that direction. The amount paid for this decree should not, therefore, have been allowed to appellees as a paramount lien upon the lands in controversy.

3.

For the reasons alleged under first assigment of error, we think the appellees should not have been allowed a recovery for the improvements placed upon the plantations. Nelson could not have claimed them and he was in no better plight. But certainly they should not have been allowed to claim for improvements after we had expressly notified them of the pendency of our suit and warned them against making them on the 15*th April*, 1878. See answer of Hudson & Ewing, P. R. 220, 403.

The actual improvement account after actual notice given as stated by court, is found on pages 292 and 293 of the printed record :

For the year 1878	$ 4,897 35
For the year 1879	2,997 68
For the year 1880	3,655 16
Making a total account of	$11,550 19
The improvements allowed for 1877 equal	2,053 50
Aggregate improvements allowed	$13,603 69
The rents allowed are as follows:	
Rents for years 1877 and 1878	$ 2,500 00
Rent for year 1879	2,500 00
Rent for year 1880	3,000 00
Total rents allowed	$ 8,000 00

We are thus charged, on the theory adopted by the court below with improvements made against our will and upon our property after actual notice of our suit, to the extent of $11,550.19, *the improvements for each year largely exceeding the rents allowed.* Our supplemental bill was filed May 27, 1879, and process of subpœna issued June 20, 1879, and the same was executed on Benson & Ewing July 4, 1879, and on Hudson June 30, 1879. P. R. 132, 205, 206. Certainly all improvements made after these dates, and for the year 1880 should have been disallowed. It would hardly consist with good conscience that a defendant to a pending suit against him should have *carte blanche* to improve a complainant out of his estate. If he desired to make improvements at all necessary or beneficial to the estate the doors of the court were open, and he could have asked the requisite authority. The limits to which such claims may be demanded we shall discuss hereafter more at length.

The rule as announced by Story is as follows: "* * * if a man, supposing he has absolute title to an estate, should build upon the land, with the knowledge of the real owner who should stand by and suffer the erections to proceed, *without giving any notice of his claim*, he would not be permitted to avail himself of such improvements without paying a full compensation therefor * * *." 1 Story's Eq. Jur., § 388. There must be an honest belief of ownership, knowledge and apparent acquiescence on the part of the owner, and a total want of notice of the adverse claim of the owner. These necessary constituents are absent in the claim of the appellees.

Judge Story elsewhere states the case thus: "* * * if the plaintiff seeks *from an innocent person* an account of the rents and profits of an estate, on which the latter has made improvements *without any notice of any defect of his title*, a court of equity, in decreeing an account, will allow him to *deduct or recoup therefrom a due compensation for his improvements* * * * * *." 2 Story's Eq. Jur. § 799 a. And in *Blight v. Boyd*, 1 Story, 478, the same learned jurist rests the

right to relief upon a want of notice of complainant's title, and a belief on the part of the defendant that his title was good.

In the case at bar there was constructive notice by the registration of our deed, actual notice given on the 15*th April*, 1878, and service of process on our supplemental bill *June* 30, 1879. Clearly, if we strain the equitable doctrine, the appellees in their recovery for improvements should have been limited to those made prior to April 15, 1878. If it be said that they made valuable and useful improvements afterwards, the answer is, they erected them after full notice and with their eyes open. They were warned and did not heed the warning. We are willing to admit, for argument's sake, that we should not be allowed to recover the *enhanced* rent caused by these improvements made *after notice* of our suit, in view of the fact that the lands were appreciated thereby, and we were thus compensated.

It is manifest that appellees could only claim for improvements made between April, 1877, and April, 1878, when actual notice was given to them of the pendency of our suit by Mr. Harlow, one of the solicitors for the appellants. This notice is admitted in the answer to our supplemental bill. P. R. 230, Mss. 403. If this is not the case all the well recognized landmarks in the adjustment of such claims must be ignored. The law in Mississippi coincides with this view; the defendant there recovers the value of all permanent, valuable and not ornamental improvements made *before notice of the intention of the plaintiff to bring the action.* Code 1880, § 2512; Code 1871, § 1557. In *Tatum v. McClellan*, 56 Miss., 358, the supreme court of Mississippi, while holding that the appellant was not entitled for expenditures in making improvements on the lands, decided that he should not be charged an increased rent, caused by the additions to the land, for which he was denied compensation. "Justice," say the court, "will be done by charging Tatum with the rent which the land would have yielded if no improvements had been put on it, and it had been rented as it was without them. * * It is enough for him to suffer the loss of his unauthorized expenditures, without having his loss augmented by requiring him to pay a rent which his expenditures partly produced." In *Johnson v. Futch*, 57 Miss., 79, *et seq.*, the same court announces what is the settled law of Mississippi on this subject and we presume that decision is controlling, if the rule is to be gathered from the statute quoted above. "*Without the statute*," as the court say, "*the right of the defendant was to set off his claim for improvements against the mesne profits, and, if the value of the improvements exceeded the mesne profits, the defendant was without relief.*" Page 80.

If the rule be as thus stated—and the equitable doctrine is less extensive than that provided by the Mississippi statute—and if appellees are not cut off by the "*lis pendens*," it is quite

clear that their recovery should have been restricted to the improvements on the plantations made prior to *April* 15, 1878, when they were actually notified of our suit for that express purpose. Thus limiting their claim the account would thus be stated:

Improvements as per schedule 1 to decree, P. R. 292 ....$2,053.50

If they were allowed for improvements up to the time they were served with process on our supplemental bill, there will be added, improvements as per schedule 2 to decree, P. R. 293, $4,897.35. Certainly the equities of the appellees cannot be extended beyond this, and the total improvement claim should have been fixed at $6,950.85 upon this theory of the case. Of this we think there can be no doubt. *Hughes v. Edwards*, 9 Wheat. 500.

4 AND 5.

The rule adopted for taking the account of rents and profits and improvements was erroneous. We find it stated thus in Leading Cases in Equity, Vol. II, pp. 2010, 2011, 2012: "In general a mortgagee in possession until foreclosure under an ordinary mortgage, is chargeable with the gross amount of rents received, or which could have been collected with reasonable care and diligence, from which, however, is to be deducted the amount expended for necessary expenses and repairs; or if by reason of personal occupancy or otherwise, no rents have been received, then he will be charged with a fair occupying rent. Nor will such mortgagee be allowed for the value of permanent improvements made during his occupation, unless erected with the consent and approbation of the mortgagor, or even for clearing wild land and thus adding to its value; although when the value of the improvements is disallowed, the mortgagee will not be charged with the rent derived solely from such improvements. When a mortgagee in possession undertakes, without the consent and approbation of the mortgagor, to make improvements on the property, though they be of a beneficial and permanent character, he does it at his peril, and has no right to look for an allowance at the hands of the mortgagor. It would be unjust that a mortgagee, or a voluntary purchaser under him, getting possession of the mortgaged premises, should be at liberty to improve it as he thought most beneficial to himself, and thereby, perhaps, deprive the mortgagor of the power of redeeming. The improvements may be beneficial in themselves, but if the mortgagor does not choose to have them, the mortgagee has no right to impose them upon him. * * * There certainly can be no hardship in this rule. * * * If the improvements are made by the mortgagee, they are voluntarily made, and he cannot turn around and claim allowance for them. They will enure to the benefit of the estate, and if he should suffer a loss the maximum will apply, *volenti non fit injuria*."

The appellees were mortgagees, or less than mortgagees, in possession. They had no title whatever; derived none under the decree foreclosing the Nelson mortgage, which was itself not sustained by any title in Nelson or James D. Partee, his grantor, because Partee himself purchased under an absolutely *void judgment*. They had mere color of title sufficient only to sustain their claim for improvements to the extent allowed by the Mississippi statute and no more. If, however, the rule stated above apply, the decree below was manifestly improper. So far as the rent is concerned the court below, as we respectfully submit, took a novel departure; the fair rental value on the basis that the plantations were leased to a solvent lessee as a whole, without reference to the sums actually collected by the appellees. There was no difficulty in determining what was a reasonable rent for the places in the condition of things existing when the appellees were notified of our suit in April, 1878, nor when they were served with subpœna in June, 1879. The court has fixed the rental value of the property, according to the rule adopted, at these figures:

For the year 1877	$1,000 00
For the year 1878	1,500 00
For the year 1879	2,500 00
For the year 1880	3,000 00

And in the face of the fact that the lands had been rented the year before for $3,000, fixed it for 1877 at $1,000, saying it was "certainly a very low charge." P. R. 289. And yet we were charged for that year with improvements amounting to $2,053.50 to be recouped against a sum for rent just one-third of what the property was rented for without these *betterments*. Appellees rented the same land with 83 acres addditional land put in; they got $2,250, and paid us $1,000. P. R. 289.

We have never believed that the law would allow a mortgagee in possession to continue the work of improvements *after suit brought against, and service of subpœna upon, him*, and we do not think there is a solitary authority to sustain the proposition. Indeed actual notice terminates the right to make or claim compensation for improvements; it places the parties at arms' length and fixes the period of time for the intervention of equities.

McSorley v. Larissa, 100 Mass., 270;
2 Story's Eq. Jur., § 1016, b, and note 2.

A fair adjustment of the equities as to rents and profits and improvements could readily be effected. To hold the appellees responsible for the rents collected during the years of their occupation based upon the property as it stood when notice of our suit was brought, and allow credits for necessary expenses and repairs; to disallow all claims for improvements after notice given in April, 1878, and not allow the enhanced rent growing out of these subsequent improvements. Of course, upon the idea that the suit was not pending as against the appellees at

the date of Nelson's entry of appearance, January 30, 1874. The acc'nts would stand, in this view of the case, somewhat thus:

Rents collected during the year 1877...	$2,100 00	
Less expenses, attention and collection, say.	500 00	$1,600 00
Rents 1878, 1879 and 1880, 3 yrs., at $1,600.....		4,800 00
Total rents due		$6,400 00
Less improvements 1877, as per schedule		2,053 50
Balance due		$4,346 50

The taxes paid on the property were claimed and allowed teparately, and are not taken into the above account. Cersainly the right of appellees, in any point of view, only extended to a *recoupment* of improvements, and not to a recovrey for the excess of improvements over rents and profits. Relief never has been carried to that extent in the absence of statute regulations.

6.

The court erred in not abating the Todd legacy decree to the extent of Mrs. Partee's interest of one fifth and to the extent of her interest in the general estate of Christopher Todd, deceased, as demanded by the appellants. P. R. 139, 154. It was right and proper to do this. The administrator of Todd ought to have credited the decree with the sum due Mrs. Partee who had not defended his bill to enforce collection of the annuity; and by pursuing the opposite course he allowed Mrs. Partee to collect all her interest in the decree and estate and forced us to pay when in good conscience he ought not. It is conceded that this would have been done had Todd's administrator and Mrs. Partee been the only parties in interest; but it is claimed that the rule is different as to the assignees of the chose in action. Is this true? They were not technically purchasers for value; they stand or fall by the vendor's title. Downer v. Bank, 39 Vt., 25, 32; Peacock v. Rhodes, 1 Doug., 636.

The rule is stated thus by this court: "It is certainly true as a general rule that a purchaser of a chose in action or of an equitable title must abide by the case of the person from whom he buys, and will only be entitled to the remedies of the seller. *Judson v. Corcoran*, 17 How., 615. If this be true appellees were in no better condition than Todd's administrator, and should have been restricted in their recovery to the balance of the Todd decree after crediting it with the $2 000 paid by James D. Partee, and Mrs. Partee's interest in it, as well as her interest in the balance of Todd's estate. These were fair and legitimate offsets. The appellees say they paid the amount of the decree to Todd's administrator, who paid it to the heirs at law, including Mrs. Partee, and, therefore, claim exemption. They admit the allegations of the bill in that behalf, however, and the question arises upon the face of the pleadings, and was adjudged against us.

7.

On the whole case it is respectfully submitted that the appellees should have been denied all relief as to the Todd decree because barred by the statute of limitations; as to the claims for improvements because the rents largely exceeded the value of those made prior to actual notice of our suit. The Todd legacy decree if not barred should have been greatly reduced as we have insisted, and the surplus of rents would have discharged it.

The proof taken in the cause under the decree of November 29, 1880, is not in record. No objection is made to the final result reached by the court under this *decretal order*. P. R. 267, *et seq.* If the interlocutory decrees and holdings are all right, the result cannot be complained of by the appellants. The case is brought up to review these rulings of the court below, and it was not thought necessary to go to the expense of bringing up a useless mass of evidence, the outcome from which is found in the findings of act by the court and schedules attached. P. R. 289, 290, 291, 292, 293.

WILLIAM L. NUGENT,
Attorney for Appellants.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, A. D. 1883.

CANAL BANK, et als.,) On appeal from Circuit
628. v.) Court, So. Dist. Miss.
ROBERT G. HUDSON & C. C. EWING.) In equity.

The record in this case failing to identify those parts of the answer of Hudson & Ewing to which the exceptions of complainants relate—P. R. page 266—to save the costs and delay of a *certiorari*, it is stipulated and agreed that said exceptions include and relate to those portions of said answer found in the printed record, as follows: The whole of pages 212 and 213, except first two lines and half page 212 and last line 213; part of the first paragraph found on page 214, beginning at words "they admit" and ending with words "is true"; the paragraph beginning at bottom of page 215, with words "respondents further answering" and ending on page 216, in reference to the tax title relied upon, with words "it is held"; the paragraph on page 216, in reference to the former decision of this court had in the cause, being first four lines of *side page* 387; the paragraph on page 217 as to acceptance of trust deed by creditors; the last paragraph on page 218; the whole of page 219 and page 220 to beginning of the first paragraph.

WILLIAM L. NUGENT,
For Appellants.
FRANK JOHNSTON,
W. P. HARRIS,
For Appellees.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1883.

—o—

CANAL BANK, et, al.

vs.

PARTEE & HUDSON, et al.

Appeal from the Circuit Court of the United States for the Southers District of Mississippi.

—o—

BRIEF OF

WILEY P. HARRIS AND FRANK JOHNSTON,

FOR THE APPELLEES.

—o—

JACKSON, MISS.:
CHARLES WINKLEY, BOOK AND JOB PRINTER,
CAPITOL STREET,
1883.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1883.

——o——

CANAL BANK, et, al.

vs.

PARTEE & HUDSON, et al.

Appeal from the Circuit Court of the United States for the Southers District of Mississippi.

——o——

STATEMENT OF THE CASE.

This case was before this court at its October Term, 1878, and the decision reported in 99 U. S. (9th Otto,) p. 325. The character of the case, and the points involved as it then stood, are briefly stated in the opinion of Mr. Justice Field.

It may be now stated, that the lands in controversy which are indicated in the record as 'no mistake,' which includes "Tyrone" and "Seven Guns," were devised to Sarah D. Partee by the will of James Dick, deceased; that to this devise there were conditions, one of which was, that the

devisee should pay to Christopher Todd and his wife, Sarah, and to the survivors of them "during the life of either," the annual sum of $1000,00. See will, printed record, p. 225; and that the controversy now to be determined, relates with an inconsiderable exception (one acre) to the lands purchased by James D. Partee at the sale under the "Stewart judgment," and comprehended in the place called 'No Mistake.'

At the date of the will of James Dick, the name 'No Mistake' applied to all the Yazoo lands. The Lake Dick place was an acquisition by Mrs. Partee after Dick's death. The controversy is moreover narrowed to the consideration of the devise aforesaid, its construction and effect, and the proceedings to enforce it; and to the matter of rent and repairs; and it may be said that the contested matters arise on a supplemental bill filed after the case was reversed by this court on the original bill and proceedings had under it in 1878.

It is deemed sufficient now to state that it is alleged in the original bill that the portion of the lands now in controversy, and which were purchased as stated by James D. Partee, under the judgment of Stewart of June 6th, 1866, was conveyed by him in trust to Fontaine Barksdale to secure Nelson Lamprien & Co., in the payment of certain debts, and advances, and that under this deed the trustee had sold and conveyed the lands in question to Thomas A. Nelson, a member of the above named firm. Record 11, 53, 62.

Thomas A. Nelson was *named* a defendant to the original bill as such purchaser. Record, p. 1, 11.

The original bill was filed April 1st, 1873, and on the affidavit of complainants, that Nelson was a *non-resident* of the State of Mississippi, *on the 10th of November* 1873, an order of publication was made against Nelson. The notice was to be published for six weeks. Rec., 91, 92.

Although process of subpœna had been issued against Nel-

son on the 8th *of July*, 1873, it was not executed. Rec., 80, 81; and the subsequent order of publication was not executed. Nelson entered his appearance to the suit *January* 30th, 1874. Rec. 93.

On the 15th *of April*, 1873, Thomas A. Nelson conveyed the land in trust to Short, trustee, to secure certain debts to Nelson Lamprien & Co. This deed was executed in New Orleans. Rec. 161, 162.

Parties holding the debts secured by this deed of trust instituted proceedings in the Chancery court of Yazoo county, which resulted in a judicial sale of the land, at which J. P. Benson and C. C. Ewing, secured creditors, and R. G. Hudson, became the joint purchasers on the 19th *of February*, 1877. Rec. from p. 154 to 187.

Thereafter on the 3d *of July*, 1877, Benson conveyed his share of the lands so purchased to his co-purchasers, Ewing and Hudson; and also his share of a decree rendered by the Chancery court of Yazoo county, Mississippi, in 1868 in a suit therein by C. Todd, in which W. B. Partee and wife, Sarah, were defendants; which decree had been purchased by Benson, Ewing and Hudson of E. Drenning administrator of C. Todd. Rec. 197.

The suit by Todd, above referred to, was instituted in 1867, against Sarah D. Partee and her husband W. B. Partee, claiming the annuity or arrears thereof, under the will of James Dick as a charge upon the land devised to said Sarah; and a final decree was entered June 10th, 1868, charging the land now in controversy with the arrears of the annuity and decreeing a sale of the land to satisfy the decree. This sale took place on the 15th *of April*, 1878; and Hudson and Ewing purchased the land at the sale. Rec. 224 to 232.

They went into possession. It should be stated moreover that in 1876 the lands were sold for taxes and Benson and C. C. Ewing bought the land and received a deed therefor. Rec. 223.

The conveyance from Nelson on the 15th *of April*, 1873, the tax sale of 1876 and the sale under the Todd decree of 1868, having occured after the original bill was filed, the complainants on the 27th of May, 1879, filed their supplemental bill. Rec. 132.

This bill brings into contest the titles acquired by Hudson and Ewing, by the means before mentioned and asks that they be made parties to the cause. It assails the titles and claims set up by Hudson and Ewing.

1. The title acquired through Thomas A Nelson as having been declared invalid, by the decision of this court in 1878, and which it is insisted, is conclusive on those claiming under Nelson a party to the suit; and for other grounds affecting the integrity of the conveyances.

2. The tax title is alleged to be invalid because of errors in the assessment. As the allegations of fraud and notice of complainants, title were denied by the answers, and no proof is found on these charges, and the Circuit court having decided that the Stewart judgment is void, as also the tax title, any further notice of these matters is omitted from this statement.

3. The Todd annuity is denied to be a charge on the lands now in dispute, but by a proper construction of the will, a charge only on certain wild lands devised to Mrs. Partee by the will of James Dick. That the decree in chancery is not binding on the complainants because they were not parties to that suit; that it was barred by the statute of limitation at the time of the sale under it; that Mr. Partee being an heir of Todd, was entitled to a distributive share of the legacy which should inure to the benefit of complainants.

The answer of Hudson and Ewing to this bill, claimed the right to litigate the matters of the original bill, and it proceeds to assert the validity of the Stewart judgment and the invalidity of the deed of trust of 1866. It denies all fraud, all actual notice of complainants claim. It alleges that the appar-

ently small sums paid under the different sales, was due to the dilapidated condition of the property and the existence of the lien of Christopher Todd, and avers that their titles were acquired in good faith. They deny that Nelson was a party to the suit on the 15th *of April* 1873 when he conveyed to Short trustee, not having been served with process or brought in by publication. No further notice need be taken of the matters connected with this title or the tax title for the reason already given.

The answer sets up the Todd decree as valid to establish the charge on the lands; but insists moreover that aside from the efficacy of the decree, the legacy was a legitimate incumbrance assigned to them by E. Drenning the administrator under the sanction of the Chancery court, on payment by them of its full value to the legal representative of C. Todd; that distributees of the estate of Todd were bound to look to the administrator for the application of the money. Rec., p. 218.

The delay in enforcing the decree for this legacy is explained. Delay for a reasonable time was granted as indulgence; and afterwards in 1870. James D. Partee by his bill for that and other purposes obtained an injunction against the execution of said decree which kept it in force until 1877, when it was finally dissolved. Rec., 233, 236. et. Seq.

The answer denies notice of the suit by complainants until served with notice by process under the supplemental bill to-wit: June 30th, 1879, and claims the value of the improvements or repairs made by them which they estimate at ten thousand dollars, claiming improvements and repairs, etc., etc., as purchasers in good faith without notice of suit.

The answer admits that after the purchase of the legacy decree at the sale under it. "A M. Harlow, one of the attorneys for the complainants, appeared and asserted some claim in behalfof complainants." Rec., p. 220.

By an exhibit to the answer of Hudson and Ewing,

which is the record of the bill and proceeding in the case of James D. Partee vs E. Drenning, administrator of Todd et al., it appears that James D. Partee alleging in his bill, that he was the owner of the plantation called 'No Mistake and in possession thereof, that he was also the owner of part of the decree obtained by Todd or his administrator by purchase for value of the share of Mrs. Partee, his mother, in the estate of Christopher Todd deceased, and also of Calhoun, another distributee, so that a great part of the decree was due to him; that the exact amount due to him has not been ascertained, owing to a litigation pending in Tennessee between certain claimants of the estate; that it was useless to sell the property under the decree during the dispute about the heirship; that the property would be unnecessarily sacrificed and other causes. Mrs. Partee was made a party to this bill and other heirs and claimants. Rec., p 233.

The bill was filed with a *fiat* for injunction July 18th, 1870. Injunction bond executed on that day. P. 237. Notice of motion to dissolve in vacation, 13th of August, 1870. Notice to give new and better injunction bond Sept. 27th, 1870. R. 240.

Motion to dissolve overruled Oct. 7th, 1870. New injunction bond given Oct. 15th, 1870, p. 242. Drenning answered 12th of April, 1871. He disputes the title to the legacy set up by James D. Partee and also his title to the property alleging that it is held in trust for Mrs. Partee and to avoid her creditors, and alleges the same thing of his claim to the legacy. He says that he has incurred costs in and about the legacy suit and the suit of the complainant and is bound in duty as well as by bond to collect and distribute the estate. Rec., p. 243.

There was a motion to dissolve the injunction or modify it April 12th, 1871 which was continued.

An agreement was then made and filed that on payment of $2,000 Drenning would abstain from all proceedings until the

Tennessee litigation was ended; p. 247. On January 10th, 1877, agreement was filed that the injunction may be dissolved and dissolution ordered by the court; p. 246. The previous agreement of 1871 was not a dismissal of the suit nor a dissolution of the injunction.

The answer of Drenning administrator of Todd to the supplemental bill of appellees answering as administrator of Todd, states that Todd died a citizen of Tennessee. His estate was then administered by Fleming and his administration is still pending there; respondent became ancillary administrator in this State, and became a party to the legacy suit and obtained the decree in 1868. On that decree he received May 1st, 1871, from J. D. Partee, $2,000.00 and on *the* 13th *of April*, 1877, he was authorized by the Chancery court of Yazoo county to assign the decree to Hudson and Ewing, they having previously purchased it of him for abobt 9,000 dollars; that the money so received, he disposed of and distributed according to law, in due course of administration, paying the distributees and amongst others Mrs. Partee. He rendered his accounts and was duly discharged of his administration by the court October 18th, 1877. Rec. 247, 250.

Parts of the answer relating to the title under Nelson were excepted to.

The title of Nelson fell to the ground with the Stewart judgment, which notwithstanding anything urged by the defendants Hudson and Ewing who were allowed to litigate; that point was by the court below, held to be void on the authority of the decision of this court.

The exceptions were overruled by the court, except as to the one acre on 'Lake Dick;' that being part of the tract purchased by Stewart. The exceptions were properly overruled, but if not, there was no injury done to the appellees. The tax title and the Nelson title can only be considered as part of the basis of a claim for improvements. Rec., 268, 269.

It is to be noted that the record contains none of the depositions taken under the supplemental bill and the answers. The pleadings and exhibits alone appear on the record.

The court on the final hearing decreed that the title derived through Thomas A. Nelson was void because of the invalidity of the Stewart judgment.

Whilst holding the title of Hudson and Ewing under the Todd decree as operative on the tilte of Mrs. Partee, the court nevertheless held it to be subject to the redemption by the beneficiaries under the trust deed of 1866.

The court proceeded to declare, that Hudson and Ewing are entitled to be reimbursed the full amount paid by them to Drenning administrator of Todd $9,393 and 23 one hundreths, with interest from the 5th of July, 1877, the date of their purchase from Drenning, for which sum as well as for the costs paid in that suit, the said Hudson and Ewing have a "paramount lien" upon the lands in controversy; and that they also have a superior lien for all taxes paid by them on the property, and for all their improvements, and repairs of a permanent and valuable character; but shall account for reasonable rents for the use of the property. The improvements are by direction in the decree to be confined to such as increased the rental value of the property. The court directed an account to be taken, giving to the parties the right to introduce evidence before the commissioner. Rec., p. 277–8, 6, 80–81.

No proof appears in the record although it is very evident from the opinion of the court on the report and exceptions that much proof was taken.

The court proceeded finally to find the facts and give the basis of the account. Rec., p. 289, 297.

The court estimated the value of the repairs for each year of defendant's use, and the rents for that year and taking the one from the other, gave six per cent. interest on the ballance.

In default of redemption by the complainants the lands were directed to be sold to satisfy, first the defendants and then the complainants. From this decree the complainants appealed.

The will of James Dick is at p. 225 of the record. We may safely confine ourselves to the parts which concern the present controversy.

After a bequest to Ann Jane Todd, the testator devises and bequeaths to Mrs. Partee as follows: "To my niece, Sarah 'D. Todd, wife of William B. Partee of New Orleans and to 'her heirs I give and bequeath 1st, my plantation commonly 'called "No Mistake" plantation near Satartia, Yazoo county, 'State of Mississippi, with all the negroes, horses, mules, cattle, 'buildings and farming untensils that may be found on said 'estate at the time of my death and belonging to me.

2. I give and bequeath to said Sarah D. Todd and to her 'heirs about six thousand acres of land situated in this State. '(The will was made in Louisiana) and entered by H. E. Law-'rence and Brashear in my name. This bequest is made to 'Sarah D. Todd, wife of said William B Partee upon the fol-'lowing conditions, under the penalty, in case of non-compli-'ance, of loss of the above property. The first of said condi-'tions is that Sarah D. Todd, wife of said William B. Partee, 'shall, within the next ensuing month after my death, pay, etc., '(legacies of $12,000.00 cash to Elizabeth Nathaniel and 'Christopher Calhoun.) "The second of said conditions is that 'the said Sarah D. Todd and her heirs shall pay to Christopher 'Todd and Sarah his wife, my sister, $1,000.00 per annum 'during the life of either, payable as they or the 'survivor may require it." The testator then makes various 'gifts and bequests to Susan K. Todd, numbered 1st, 2d, 3d, '4th, etc., this is followed by a great number of pecuniary lega-'cies.

The testator then declares, "and my will as follows: That all the legacies I have given in money and not charged upon

any particular fund, is not to be demanded from any person for the term of two years after my decease."

And he then annexes to all legacies a condition of forfeiture in case the legatee shall contest the will or any provision thereof, "the bequest or legacy to such person or persons is 'annulled or rescinded by me. The legacies of $12,000.00 each 'to Elizabeth Calhoun, Nathaniel Calhoun and Christopher 'Calhoun may be paid by Sarah D. Todd, wife of William B. 'Partee in the following manner, viz: To Elizabeth Calhoun 'on the day of her marriage, and to Nathaniel and Christopher, 'when they become of age, upon the condition that the said 'Sarah D. Todd pays annually the interest at seven per cent. 'upon their respective legacies after she comes in posses-'sion of "No Mistake" plantation."

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BRIEF I.

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The rule which attaches such serious consequences, to a purchase *'lis pendous'*, is characterized as a harsh rule not to be stretched beyond its technical boundaries.

It is a purchase from a party to a pending suit, and the service of process or the completion of some other proscribed mode of judicial notice, as by completed publication, is essential to create a *'lis pendous'* against the party conveying —so as to effect a purchaser from him.

Wade on the law of Notice, 348; 350;
Bailey vs. McGinnis, 57, Mo. 371;
2 Pomroy Eq., 75;
1 John Cha 556;
14 Peters 223; 333,

It is clear in this case, that Thomas A. Nelson though named as a defendant in the original bill filed April the 1st, 1873, was not a party so as to accomplish *lis pendous* until

he entered his appearance January 10th, 1874. There was no service by subpœna, or by publication on him when he conveyed on the 15th of April, 1873, to Short trustee. His subsequent appearance cannot have relations back, to effect intermediate purchasers. This retroactive effect is never allowed. The purchasers under the decree in favor of the secured creditors were strangers to the suit standing on the rights of the creditors, strangers to the suit.

There is nothing peculiar in the doctrine of *lis pendous*, as it has been expounded in Mississippi, *Service*, not the bare issuance of process is necessary.

Bacon vs. Gardner 23; Miss., 60.

The tax title of 1876, was held void, and the title derived through Thomas A. Nelson, fell with the Stewart judgment. These titles can only be looked to as constituting grounds for a claim to improvements or repairs. A title acquired in good faith however defective, is sufficient to justify the allowance between adverse claimants of lands, as a substantive right without regard to the claim for rents.

In any action of ejectment or for mesne profits, the defendant may "plead the value of all permanent, valuable, and not ornamental improvements made by the defendant on the land or by any one under whom he claims before notice of the intention of the plaintiff to bring the action" * *; but no, defendant shall be entitled to such compensation for improvements unless he shall claim the premises under some deed or contract of purchase made or acquired in good faith."

Code of 1871 p. 317, §1557.

If the improvements exceed the rents the excess shall be "a lien upon the land."

Ib.

By act of 1872 the claim for improvements is made independent of claim for damages or *mesne profits.*

"Whether the plaintiff declares for and claims in his declara-

tion *mesne* profits and damages for use and occupation thereof or not."

Acts 1872 p. 25;

The effect of the statutory provissions is stated in Cole vs. Johnston 53 Miss., p. 97;

The existence of a registered conveyance amounting to constructive notice, does not effect the *bona fides* of the acquisition if the defendant, had no actual notice of the fact. It is the belief in the sufficiency of the title acquired, that gives the right to compensation, and the policy in Mississippi and in many other States, as evinced in their liberal legislation is to *encourage* substantial and valuable improvements enhancing the practical value of property.

It will be borne in mind, that the court found the fact of a *bona fide* acquisition of the title by Hudson and Ewing. The appellants have seen fit to omit from the record all the depositions, and to treat the supplemental proceedings, as standing on bill answers and exhibits; and thus concede the accuracy of all findings of the court, on mattters of fact, accepting them in lien of the evidence.

Hudson and Ewing deny all notice of any adverse *claim* of complainants until the sale day under the 'legacy decree' April 15, 1878. The answer on this point admits that A. M. Harlow, "asserted some claims in behalf of complainants." And they deny all notice of the pendancy of any suit, or any intention to sue them, until served with sepœna to the supplemental bill June 10, 1879. It should be remembered that the assignment of the 'legacy decree' of 1868 by Drenning was made, as the court found, on the 5th of February, 1877.

The order of the acquisitions of title by Hudson and Ewing is in point of time, as follows;

Purchased Tax title 1876.

Purchased under Nelson's deed to Short trustee, judicial sale February 19th, 1877.

Purchase of Todd legacy February 5th. 1877.

Purchase under legacy decree April 15th, 1878.

We will hereafter notice the matter of repairs, &c., in the relations established by possession under the foreclosure of the lien of the lagacy.

II.

It is tacitly conceded by the counsel for appellants in their brief or at least it is not denied, that the lagacy to Christopher Todd and wife, is a charge upon the property devised to Mrs Partee. The so called 'conditions' attach to the whole devise and not to a part of it. If any doubt arises as to the application of the words 'this bequest', it is removed by the after words "the above property" which clearly point to all the property. If it should be said that the words immediately follow the property last discribed in the provision for Mrs. Partee, it may also be said, that they follow the entire provision.

The testator evidently intended to secure the payment of the legacies appointed out of the provision for Mrs. Partee, because he exonerated the residue of his estate by designating the property devised to her as the 'particular fund' for their payment.

That the legacy to Todd and wife, as also those to the Calhouns were intended as a 'charge' is shown by that part of the will which distinguishes other legacies from those "charged upon any particular fund." There is no other particular fund" 'charged' with lagacies.

The testator in charging the property devised to Mrs. Partee with the Todd legacy, created an express trust; and it may be fairly assumed that he did not intend to impose a personal liability on her, a married woman, although such liability is not inconsistent with the charge on the propriety.

Harris, Appeal 31 Pa. st., 53.

Patterson vs. Patterson 63 N. C. 322.

Meekin vs. Duvall 43 Md. 378.

Sands vs. Champlin 1 Story C. C. 380.

Fox vs. Phillips 17 Wend 393.

The law of the subject is discussed generally by Jarmyn and collected in note.

2 Jarmyn Wills by Randolph and Talcott, 508.

The will was probated and recorded in Yazoo county and all parties taking the property by conveyance from Mrs. Partee, took it subject to the charge imposed on it, and this charge has been recognized as an incumbrance by all those dealing with the property. The appellees were advised that such charge existed when they accepted their deed of trust. See Bank vs Partee 99, U. S., p. 328.

The omission to make Bowman, the trustee, a party to the suit to enforce the incubrance had the effect, at most, of leaving the purchaser under the decreee subject to a claim by the junior incumbrancer to redeem the property. The case is substantially that of a prior mortgagee in possession by virtue of a defective foreclosure or by a judgment in ejectment; to give it the chacacter most favorable to the appellants.

It will be found that in allowing compensation for improvements the Circuit court, whether by design or not, confined the allowance to repairs. The cotton farm has certain appointments essential to its effectiveness. The gin, the cotton houses in remote fields for temporary storage of seed-cotton; the cabins for laborers, barns and stabling for the animals; ditches for drainage, fences, bridges, gates, etc. All these things existed at the time Hudson and Ewing took possession, but they were in a ruinous state and a large expenditue was as essential to the junior incumbrancer as to the elder in possession, in order to bring the property into profitable use as a farm. The rental value was increased obviously by these repairs.

Tbe commissioner took proof which was before the court with his report, as the rulings show. The whole matter was submitted to the practical mind of one obviously well

versed in cotton farming. What this proof was, the record does not inform this court. We must assume that the proof justified all the conclusions of the Circuit court as to values of rents, restorations and repirs. The rulings moreover show careful pains taking examination of particulars.

The fact that after suit brought against Hudson and Ewing, they continued to increase the area cultivated by the usual methods of reclamation of dilapidated farms, and kept up the repairs, does not effect their claim to compensation. If they had suffered the property to lie waste or to go to ruin, they would have been reponsible for waste. The appellees seeking, not the property, but a sale of it, (and the right to *sell* was all the right they had under their deed,) should bear the burden of the expenditure which increased the value of the property; the appellees being condemned to pay increased rents.

That the allowance for proper repairs or improvements exceed the rents for the years in which they were made, is no obstacle to their allowance under the Mississippi statute, as we have seen, nor by the rules governing courts of equity in such matters, even between mortgagees in possession, and othe-junior incumbracers.

What is a proper expenditure depends on the circumstances of each case. In the case of a farm, a mortgagee in possession may restore, and go beyond the mere keeping of the premises as he found them.

2 Jones Mort. 12, 26;

Woodward vs. Phillips, 14 Gray 132;

Dexter vs. Arnold, 2 Sumner 108;

Judge Story, in 2 *Sumner*, 126, distinguishes between the duty to make permanent improvements, and the propriety and justice of allowing compensation where the improvements are for the benefit of the property.

Where he is charged increased rent on account of the improvements, this seems to be a proper distinction.

2 Jones Mort. 1127, 1128;
Holman vs Morse 50, Me 102;
Childs vs Dolan 5, Allen 319;

The subjects of allowance are enlarged where a mortgagee has gone into possession on a foreclosure believed to be valid.

2 Jones Mort. 1128;

In *Wetmore vs Roberts*, 10 *Hun. N. Y.* 53, the court takes a proper distinction between a mortgagor seeking to redeem and a junior mortgagor seeking to *sell*, when the elder incumbrancer is in possession under a defective proceeding to foreclose.

In *Togal vs Pirro*, 17 *Abb. Pr. N. Y.* 113, the court said the general rule disallowing expenditures burdening the right of redemption, is subject to exceptions and gives the case of a mortgagee in possession, believing himself owner.

So Chancellor Walworth said in Benedict vs Gillman, 4th Paige Ch. Rep.

Story Eq. § 1227;
Frost vs Davis, 31, Ind. 34;
Roberts vs Fleming, 53, Ill. 204;

Delay in filing a bill to redeem, will constitute an exception.

53 Ill. 204;
Bollinger vs Chautard 20 Mo. 95, 96;

Kent in his commentaries says, all cases concur in allowing necessary repairs to a mortgagee in possession, beyond that, the rule is not inflexible, but is subject "to the discretion of the court regulated by the justice and equity arising out of the circumstances of each particular case."

4 Kent, 167, note;

The cost of a new barn was considered a just allowance, as a "judicious expenditure in the proper management of a farm."

Powell vs Jewett, 73 Me.
2 Jones Mort. 11, 29;

It was proper to charge the fair rental value without inquiry into the profits.

Bennett vs Nelson 57, Iowa 41;

This is the only practicable rule in respect to farming with hired labor. In the mixed system of farming in Mississippi and other cotton States, partly hired labor, partly by cropping on shares, etc., etc., with the purchase of supplies, etc., etc., to get the profits would be a difficult task, and would often give the claimant of rents nothing.

11 Jones Mort. 11, 22;

The court adopted the fair rental value without regard to profits and this was, so far as can be seen, without the evidence, the just rule.

We call attention to the opinion of the court on exceptions to the report of the commissioner to take the acconnt. Rec., p. 298, et Seq.

The proposition that the allowance for permanent and needed repairs and bettements, can never exceed the rental value of the property during the occupancy, is not a rule established by reason or authority. It is arbitrary and irrational and opposed to the spirit of the legislation of Mississippi. The repairs added to the rental value of the property. The court reduced the estimate below the expenditures or cost, thus confining the allowance to the added value. It is a substantive claim allowable, rent or no rent, resting on a well recognized equity, which goes to the whole value of the repairs.

III.

The appellants did not set up the statute of limitation in their amended bill, in such manner as to entitle it to the notice of the court. It is incidentally introduced in a running fire of objections in these words: "The said decree in favor of said Drenning was barred by the statute of limitation prior to the sale made by said Tyler of said lands thereunder."

In the argument it is assumed that this means that the *lien* of the decree expired before it was acquired by assignment or before it was executed by a sale, by force of the Code of 1857, Brief p. 10.

The law creating liens of judgments and decrees, applies only to personal decrees for money. It gives a lien where none existed—a general lien on the defendant's property. It had no reference, from the nature of the case, to decrees to establish and enforce liens on specific property, created by will or contract. At the date of these transactions the court of chancery had no jurisdiction to render a decree *in personam* in a foreclosure suit nor in a suit, to enforce a lien on specific property, as the vendors lien and other like liens or charges.

Cobb vs Duke 36, Miss. 60.

The giving day of payment, with the alternative of foreclosure by sale, is not recognized as authorizing the writ of *fi fa* against the goods and chattles, lands and tenements of the defendant. A statute authorizes the same final process on decrees in equity in personam for money, as on judgments of like kind; but this provision manifestly applies to decrees in personam only.

The decree in the legacy suit, is the ordinary foreclosure decree—a decree *in rem*. It rendered no personal judgment, *created* no lien, but enforced a specific lien on the property on which it was imposed by the will of James Dick. Rec. 231.

The Chancellor did not consider that the will created a personal liability; at all events he rendered no personal decree.

The policy of limiting the general lien, incident to judgments and decrees *in personam* for the recovery of money, is quite apparent. It is the creature of the statute and encumbers all property then owned or afterward acquired by the defendant.

Law of judgment liens, etc., Code of 1857, p. 524, Art. 261. "All judgments and decrees so enrolled, shall be a lien

upon and bind all the property of the defendants within the county where enrolled, etc." The decree in question did not have this effect. It bound nothing but the specific property on which the charge rested, and not by virtue of a lien acquired by the decree, but by virtue of the will which the decree enforced.

This seems too obvious to require elucidation, but the strange misconception of the meaning of the law, by able counsel makes it necessary. All decrees are clearly not meant, such as decrees to convey, in partition, etc.

The decree gave effect to the lien and relates back to it, without displacing it, as in attachment proceedings.

Gray vs Perkins, 12 S. & M., Miss. 622.

If the provision of the statute of limitations quoted in the brief of appellant's counsel applies to the decree at all, the injunction here brings the case within the exception.

The injunction was obtained on a bill filed by the party who claimed to own the property 'No Mistake,' and who also claimed as assignee of Mrs. Partee her share of the legacy which the decree sought to enforce. He was in privity with the defendant to the decree and was as owner of the land and in possession, bound by the charge of the legacy. The injunction prohibited the sale of the land until the further order of the court, and it could not be disobeyed. It is not a question now whether the court was right in grrnting it. Drenning moved to dissolve it on the face of the bill and his motion was overruled as we have seen. It is very clear, therefore, that the injunction was within the true meaning and spirit of the exception in Art. 16 of the Code and quoted by counsel. It has the same meaning in that article which it has in Art. 26, Code 1857, p. 402. "Art. 26, when any person shall be prohibited by law or restrained or enjoined by the order, decree or process of any court of this State from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited, restrained or enjoined, shall not be computed."

It is manifest that any obstacle interposed by law or the process of a competent court, is here meant, without regard to the party at whose instance it was interposed. It is the effect of the *law* or the process eminating from public authority, that affords the justification for delay, because the authority cannot be resisted. It is not that the party seeking the interpostion, is in conscience bound, or is at fault, or caused the delay. It is the mandatory stay of proceedings.

It is urged that the agreement to await the result of the litigation in Tennessee, displaced the injunction. That agreement was in effect to allow the suit and injunction to remain *in statu quo.* The injunction was designedly retained, as appears by a subsequent consent in 1877, that it might be dissolved. We refer to our statement and the record.

It will be observed that the Circuit court set aside the sale under the decree and superseded that, except perhaps, so far as it fixed the amount due for arrearages of the annuity, but established the charge created by the *will* as a paramount lien subject to be redeemed. This is an express trust, which is subject to the limitation of ten years; Code of 1857, Art. 31, p. 403. "Bills for relief in case of the existence 'of a trust, not cognizable by the courts of the 'common law, * * shall be filed within ten years after the cause thereof shall accrue, and not after."

Templeton vs Tompkins, 45 Miss. 424;

The suit against Sarah D. Partee was sufficient to stay the running of the statute as against her *and any* one claiming under her by a subsequent conveyance, although such conveyance was made prior to the suit, unless the party so claiming can set up an adverse possession for the period of limitation.

Here the beneficiaries nor the trustee under the deed of 1866, were in possession. Unless they can show such adverse possession under their title, they stand in the shoes of the mortgager. This has been expressly decided by the Supreme court of Mississippi.

Green vs Supervisors, 56 Mi. 343;
Citing, Benson vs Stewart 30 Mi. 49;

The case is substantially like that of a bill to foreclose a a mortgage. Hudson and Ewing could not plead the statute of limitations without avering adverse possession under their title for ten years. The appellee must stand in the shoes of Mrs. Partee, or on an independent footing.

IV.

The claim to an abatement of the amount paid by Hudson and Ewing for the Todd legacy or decree, has no foundation in any recognized principle of jurisprudence. All that is known touching the estate of Todd and its settlement is to be found in the pleadings in James D. Partee's suit against Drenning, administrator of Todd, begun in 1867. On the 5th of February, 1877, as the Circuit court found, Drenning received the amount of the decree from Hudson and Ewing before he was made a party to this suit or had any notice of the claim of any one to Mrs. Partee's distributive share in the estate of Todd, save that set up by James D. Partee. Drenning at that point of time (1877) held the legal title to the legacy or decree with power to collect it. Mrs. Partee had no title of any kind to this particular part of Todds estate, but an unascertained share of the whole estate in course of administration in Tennessee and Mississippi. When, therefore, Hudson and Ewing purchased the decree, it was not subject to any legal or equitable claim even by Mrs. Partee. Mrs. Partee in the final settlement in Tennessee, if found to be entitled to a share of the Todd estate, might have adjusted the claim to the legacy by debiting her share in the general estate, with what was due from her on the legacy, certainly the devolution of Todds estate on her and others, had not worked an extinction or merger of any part of the charge on her property existing in favor of Todd, she having no title of any sort to any specific portion of this uncollected legacy. In this condition of things the administrator of Todd, with his legal title, collected the

legacy, and after satisfying prior legal claims upon it, distributed it in due course of administration. Mrs. Partee's claim then attached to this fund in the administrators hand and so of these claiming through her.

The proposition that when Hudson and Ewing bought the claim, it was subject to Mrs. Partee's claim, or that of appellants through her, or to an equity in their favor, is without support in any principle of law or equity. The estate of Todd was encumbered, though solvent says Drenning.

The conditions described when Hudson and Ewing purchased and took an assignment of the decree, prevented any merger or extinction of any part of the decree for the reason given and for another reason. No merger takes place when the mortgagee becomes entitled to only part of the mortgage debt. There clearly could not be a merger of an unascertained part of the debt or of a a debt belonging to an estate to which the mortgagor had an unascertained share as a distributee.

1 Jones mort. § 849;

The case of *Clark vs Clark*, 57 *N. H.*, 113, 114, discusses fully the doctrine of merger in such a case and we refer to it.

If the legacy or decree was a chose in action, as is asserted in the argument, there was no equitable claim on it at the time, nor was any acquired afterwards by the appellees.

The case is complicated by the mode of treatment in the argument of the appellant's consel and demanded a reply, tedious we fear, but not otherwise difficult.

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